

NO

C. H. Tappan
J. C. Clifton
CORRESPONDENCE

RELATIVE TO THE

NORTH AMERICAN FISHERIES:

1884-86.

VANCOUVER
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PUBLIC LIBRARY

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Correspondence relative to the North American Fisheries.

No. 1.

Mr. West to Earl Granville.—(Received May 17.)

My Lord,

Washington, May 4, 1884.

I HAVE the honour to inclose herewith to your Lordship copies of a Joint Resolution introduced into the House of Representatives, requesting the President to negotiate with Great Britain for a renewal of the Canadian Reciprocity Treaty of 1854. This Resolution was not acted upon. It would appear, however, that the Committee on Foreign Affairs, to whom it was referred, is doubtful if such a Treaty would now be satisfactory, and it is proposed in consequence to report and substitute for it a Resolution, expressing the opinion of the House in favour of negotiations looking to a commercial agreement without undertaking to specify its terms or encroaching upon the province of the Treaty-making power. It is expected that some action may be taken on the matter by the end of this week. I have addressed a despatch to the Marquis of Lansdowne in this sense, and have forwarded to his Excellency copies of the Resolution.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 1.

48th Congress.—1st Session.—H. Res. 32.

IN THE HOUSE OF REPRESENTATIVES.

December 11, 1883.—Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

MR. MAYBURY introduced the following Joint Resolution:—

Joint Resolution requesting the President to negotiate with Great Britain for a renewal of the Canadian Reciprocity Treaty of 1854. Whereas the Reciprocity Treaty with Great Britain regulating commerce and navigation between the United States and the British Colonies of North America was terminated on the 17th March, 1866, in virtue of previous notice given by the United States; and whereas the provisions of said Treaty providing for mutual rights in certain sea fisheries, and for the free navigation of the Great Lakes, the River Saint Lawrence, and the canals connected therewith, were restored in 1871 by the Treaty of Washington, so called; and whereas unfettered trade and commerce between the British possessions of North America and the United States would be reciprocally beneficial, advantageous, and satisfactory: Therefore:—

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled.

“That the President of the United States be, and he is hereby, respectfully requested to negotiate with the Government of Great Britain for a renewal or restoration of the provisions of the Treaty abrogated in 1866 as aforesaid, providing that all articles enumerated in said Treaty, being the growth or produce of the British Colonies of North America, or of the United States, should be admitted into each country respectively, free of duty.”

No. 2.

Mr. Currie to Sir R. Herbert.

Sir,

Foreign Office, June 2, 1884.

I AM directed by Earl Granville to transmit to you a copy of a despatch from Her Majesty's Minister at Washington concerning the Resolution introduced into the House of Representatives, requesting the President to negotiate with Great Britain for a renewal of the Canadian Reciprocity Treaty of 1854.*

I am to request that you will move the Earl of Derby to favour Lord Granville with his opinion as to the language Mr. West should be instructed to hold in the event of his being asked by the United States' Government whether Her Majesty's Government would approve the negotiation of such a Treaty.

I am, &c.

(Signed) P. CURRIE.

No. 3.

Mr. Bramston to Sir J. Pauncefote.—(Received June 13.)

Sir,

Downing Street, June 12, 1884.

WITH reference to previous correspondence respecting the approaching termination of the Fishery Articles of the Treaty of Washington, I am directed by the Earl of Derby to transmit to you, to be laid before Earl Granville, a copy of a despatch from the Officer administering the Government of Newfoundland, inclosing an extract from a Minute of the Executive Council of the Colony on the subject.

Lord Granville will, no doubt, accord to the representations of the Executive Council of Newfoundland such support as may be possible in any negotiations which may take place with the United States' Government in regard to this question.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 3.

Administrator Carter to the Earl of Derby.

My Lord,

Government House, Newfoundland, May 20, 1884.

I HAVE the honour to transmit to your Lordship copy of an extract of a Minute of the Executive Council, expressive of their views on the subject of your Lordship's despatch of the 30th January last, with reference to the approaching termination of the Fishery Articles of the Washington Treaty.

I have, &c.

(Signed) F. B. T. CARTER.

Inclosure 2 in No. 3.

Extract from Minutes of Council, May 16, 1884.

THE Right Honourable Secretary of State for the Colonies having in his despatches of the 3rd May and the 28th December last expressed a desire to be informed of any views which this Government might have to offer regarding the expiry of the Fishery Clauses of the Washington Treaty:

The Council would observe that the operation of these clauses has been found useful to the trade of this country in regard to the free admission of the Newfoundland produce into the markets of the United States. A state of trade relations has arisen under these provisions, the disturbance of which would be attended with inconvenience and injury. The opening of new markets would be a work of time and possible difficulty, and meanwhile losses on shipments might reasonably be apprehended.

The Council are therefore desirous that Her Majesty's Government may see the way to an arrangement with the Government of the United States which would continue the free admission of Newfoundland fish productions into the United States' markets after the Fishery Clauses of the Washington Treaty shall have expired.

(Signed)

E. D. SHEA,
Clerk Executive Council.

No. 1.

Mr. West to Earl Granville.—(Received July 25.)

My Lord,

Washington, July 12, 1884.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, informing me that, in view of Congress having adjourned without reaching any action on the President's proposal to appoint a Commission to consider the Fisheries Articles of the Treaty of Washington, it is deemed best to defer definite action on the British proposal until December next.

I have, &c.

(Signed) L. S. SACKVILLE WEST

Inclosure in No. 4.

Mr. Frelinghuysen to Mr. West.

Sir,

Department of State, Washington, July 11, 1884.

ADVERTING to the language of the President's last annual Message to Congress relative to appointing a Commission to consider the subject, I have the honour to inform you that Congress has adjourned without reaching any action on the President's recommendation. In such an important international question, in which Congress has intervened at every stage hitherto, it is deemed best to defer definite action on the British proposal until December.

I have, &c.

(Signed) FRED. T. FRELINGHUYSEN.

No. 5.

Sir J. Pouncefote to Mr. Brumston.

(Extract.)

Foreign Office, November 20, 1884.

LORD GRANVILLE would suggest that the views of the Canadian Government should at once be definitely obtained as to the course to be pursued in the negotiations with the United States, in view of the fact that the Fishery Articles of the Treaty of Washington will expire on the 1st July next, and that it appears to be very desirable that some satisfactory arrangement should be come to before that date, in order to avoid the risks and complications which might arise from the Fishery question being left in an undecided state.

If negotiations with the United States' Government were once commenced, and it were found during the course of them that an agreement were not likely to be reached by the 1st July, it is possible that a proposal for continuing the *status quo*—at all events in regard to Newfoundland—for some stated period, such as a year, might permit the conclusion of a definite arrangement without the inconvenience arising from a displacement of trade, and a sudden change in the area open for fishing purposes to American and colonial fishermen respectively.

Sir R. Herbert to Sir J. Pouncefote.—(Received December 6.)

Sir,

Downing Street, December 4, 1884.

WITH reference to your letter of the 20th ultimo, relating to the question of the course to be pursued in regard to the North American fisheries on the termination of the Fishery Articles of the Treaty of Washington, I am directed by the Earl of Derby to transmit to you, for the information of Earl Granville, a copy of a despatch which his Lordship has addressed to the Governor-General of Canada on this subject.

Lord Derby does not propose to make any communication to the Governor of Newfoundland upon this matter until after the answer from the Governor-General of Canada has been received.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

4
Inclosure in No. 6.

The Earl of Derby to the Marquis of Lansdowne.

My Lord,

Downing Street, December 4, 1884.

IN view of the fact that the Fishery Articles of the Treaty of Washington will expire on the 1st July next, I have the honour to inform you that Her Majesty's Government are desirous of obtaining at as early a date as may be possible some definite expression of the views of the Government of the Dominion of Canada as to the course which they may wish to be pursued, in negotiation with the Government of the United States, with the object of arriving at some satisfactory arrangement with that Government in order to avoid the risks and complications which might arise from the Fishery question being left in an unsettled and undecided state.

You will therefore be so good as to lay this despatch before your Ministers, and to request them to favour me, at their earliest convenience, with such an expression of their views upon this important subject as they may be in a position to supply.

I have, &c.

(Signed) DERBY.

No. 7.

Mr. Bramston to Sir J. Pauncefoot.—(Received January 19.)

Sir,

Downing Street, January 17, 1885.

WITH reference to the letter from this Department of the 4th December last, inclosing copy of a despatch which the Earl of Derby had addressed to the Governor-General of Canada, relating to the course to be taken on the termination of the Fishery Articles of the Treaty of Washington, I am directed by his Lordship to transmit to you, to be laid before Earl Granville, a copy of a despatch which has been received from the Governor-General in reply.

Lord Derby would be glad to be favoured with the views of Lord Granville in regard to the proposal contained in this despatch.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure in No. 7.

The Marquis of Lansdowne to the Earl of Derby.

My Lord,

Government House, Ottawa, December 26, 1884.

I HAVE the honour to acknowledge receipt of your Lordship's despatch of the 4th December, and to inform you that, agreeably with the instructions contained therein, I have urged upon my Government the necessity of supplying your Lordship with a definite expression of its views in regard to the steps to be taken in consequence of the approaching expiration of the Fishery Articles of the Treaty of Washington.

2. Some delay has been occasioned by the absence of Sir John Macdonald from Ottawa on public business. I have, however, since his return had several conversations with him, and am now able to give your Lordship an indication of the manner in which the Government of the Dominion desire to deal with this question.

3. I have in the first place to point out that these Articles have been abrogated by the Government of the United States in compliance with a vote of Congress, without, as far as we are aware, any intimation of a desire on the part of that Government to substitute for them any other arrangement, and without any specific disclosure of the reasons which have induced it to adopt such a course beyond general and unofficial expressions of dissatisfaction with the result of the Award under which the United States were required to pay a sum of 5,500,000 dollars for the privilege of fishing in the waters to which their fishermen were admitted under the Treaty of 1871.

4. A course similar to that which has been now adopted was followed by the Government of Washington in regard to the Treaty of 1854, which was abrogated in like manner to the detriment of the commercial relations which had been established between the two countries while it was in operation.

5. In the face of these circumstances my Government does not consider that it would be consistent with the respect which it owes to itself to appear as a suitor for concessions at the hands of the Government of the United States. It is, moreover, certainly open to question whether, if negotiations on this subject are to be approached

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at all, they will not be approached with a better prospect of success if they are commenced and conducted with the Government which will assume office next spring, rather than with that by which the Articles have been denounced, and which could not reasonably expect to terminate such negotiations before the end of its official existence.

6. The expiration of the Fishery Articles, although it will no doubt produce some dislocation of this branch of the commerce of the Dominion, will only replace it in the position which it occupied between the expiration of the Treaty of 1854 and the commencement of the Treaty of 1871. Each party will be restricted to its own waters, and steps will be taken to protect from trespassers those of the Dominion, which are admitted to be of far greater value than those of the United States. It is probable that a considerable portion of the catch of the Canadian fisherman would find its way, as it did during the period referred to, to the same markets as now, but carried in American vessels, the owners of which would purchase the fish from the Canadian fishery vessels, whilst afloat, and enter them at their own ports free of duty as their own catch, for re-sale in the West Indies and elsewhere.

7. In another respect, however, the action of the United States' Government is no doubt likely to have inconvenient, and, perhaps, embarrassing results, though not to Canadian fishermen. The Fishery Clauses will cease to operate on the 1st July, 1885. At that time vessels belonging to the United States will be engaged in fishing in Canadian waters. These vessels will have been equipped and fitted out for the season's fishery, and will have made all their arrangements in the belief that they would be able to prosecute their business until its end. If these vessels were, upon the day following that upon which the Articles ceased to operate, either captured for trespass or compelled on pain of seizure to desist from fishing in Canadian waters, considerable loss would be occasioned to the owners, and much ill-feeling created between the two countries. The Government of the Dominion has no desire to be instrumental in producing such a state of things, and I am able to inform your Lordship that, should such a course be acceptable to the Government of the United States, we should be prepared to agree to an extension of the operation of the clauses in regard both to "free fishing" and to "free fish" until the 1st January, 1886. If this were to be done, their expiration would take place between the fishing season of 1885 and that of 1886, instead of in the middle of that of 1885, with the result of avoiding those complications of which I have already spoken.

8. The delay thus gained would, if the United States were to show any desire for the discussion of the commercial relations of the two countries, give time for such a discussion, and the Government of the Dominion would have no object in restricting the scope to the subject of the fisheries. It is indeed a matter of notoriety that the Dominion has consistently expressed its readiness to become a party to an arrangement which might have the effect of affording increased facilities for international commerce between itself and the United States. It has given the best proof of its sincerity by taking under its existing Customs Laws powers of which your Lordship is aware to admit upon favourable terms by Proclamation of the Governor-General those products of the United States which were included in the Treaty of 1854, whenever a similar course in regard to the natural products of the Dominion may be adopted by the Government of Washington. It regretted at the time the termination of the Treaty of 1854, which it believed to be advantageous to the interests of both countries, and it would be fully prepared, on receiving from the Government of the United States an intimation that negotiations would be likely to produce useful results, to enter into such negotiations in an amicable spirit.

9. I think it my duty, in conclusion, to make your Lordship aware that in a letter to Her Majesty's Minister at Washington, dated the 23rd instant, I asked him to be good enough to inform me whether such an *ad interim* arrangement as I have indicated in paragraph 7 was likely to be agreeable to the Government to which he is accredited.

I have, &c.
(Signed) LANSLOWNE.

No. 8.

Sir J. Pauncefoot to Mr. Bramston.

(Extract.)

Foreign Office, January 26, 1885.

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 17th instant, containing a despatch from his Excellency the Governor.

General of Canada upon the subject of the attitude which the Dominion Government desire to assume with regard to the approaching termination of the Fishery Articles of the Treaty of Washington; and I am, in reply, to submit, for the Earl of Derby's consideration, the following observations thereon:—

Lord Granville approves of the proposal to adopt an arrangement whereby the operation of Articles XVIII, XIX, XX, and XXI of the Treaty, which provide for reciprocal free fishing, and free importation of fish and fish oil, should be extended to the 1st January, 1886, in order to permit time for negotiation, and to avoid the risk of complications which might arise from the right of fishing in British waters enjoyed by United States' fishermen under the Treaty coming to an end in the midst of the next summer fishing season.

I am to state that Lord Granville would propose, with his Lordship's concurrence, to send a copy of your letter confidentially to Mr. West, with instructions to inquire officially, at once if possible, whether the United States' Government would consent to prolong the *status quo* till the 1st January, 1886; and, as soon as the new Government comes into office, to endeavour, unofficially, to elicit their views as to negotiations for a more permanent settlement of the question.

No. 9.

Mr. Bramston to Sir J. Pauncefoot.—(Received February 14.)

Sir,

Downing Street, February 13, 1885.

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 26th January, relating to the question as to the course to be pursued in reference to the termination of the Fishery Articles of the Treaty of Washington.

In the concluding paragraph of your letter it was proposed that an inquiry should at once be officially addressed to the United States' Government by Her Majesty's Minister at Washington as to whether the United States' Government would consent to prolong the *status quo* until the 1st January, 1886, and, as soon as the new Government comes into office, to endeavour, unofficially, to elicit their views as to negotiations for a more permanent settlement of the question.

With regard to the inquiry first proposed, Lord Derby thought it advisable, before any official communication should be addressed to the United States' Government, to ascertain whether the Government of the Dominion wished the continuance of the *status quo* to apply to Article XXX of the Treaty of Washington as well as to the Fishery Articles. With this view his Lordship has placed himself in communication with the Governor-General of the Dominion; and I am to inclose, for Lord Granville's information, copies of the telegrams which have passed upon the subject.

Lord Derby would be glad to receive any observations in regard to the views of the Dominion Government expressed in these telegrams which may occur to Lord Granville.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 9.

The Earl of Derby to the Marquis of Lansdowne.

(Telegraphic.)

Downing Street, February 3, 1885.

YOUR despatch 26th December. Her Majesty's Government desire to be informed by telegraph to what extent do Canadian Government wish provisions of Treaty remain in *statu quo*. Have they any objection to proposing to United States' Government that the whole Treaty should continue in operation till 1st January next?

Inclosure 2 in No. 9.

The Marquis of Lansdowne to the Earl of Derby.

(Telegraphic.)

February 5, 1885.

CANADIAN Government understand that notice of the termination of Fisheries Clauses only includes the clauses giving American access to our waters and the clauses

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admitting fish free of duty. We are prepared to extend both till January next, but I am informed privately by Her Majesty's Minister at Washington that the United States' Secretary has intimated to him that, at this late date, such an arrangement is deemed impracticable.

Inclosure 3 in No. 9.

The Earl of Derby to the Marquis of Lansdowne.

(Telegraphic.)

Downing Street, February 6, 1885.

WITH reference to your telegram of the 5th instant, Notice relates to Articles XVIII to XXV and Article XXX. Would your Government desire that formal application should be made to United States' Government for extension until 1st January of all those Articles?

Inclosure 4 in No. 9.

The Marquis of Lansdowne to the Earl of Derby.

(Telegraphic.)

February 7, 1885.

IN reply to your telegram of the 6th, we are ready to extend till January Article XXX, as well as Fishery Articles. Extension Articles XXII to XXV would not be necessary, as question of further payment would not be raised. As Article XXX has no connection with Fishery question, we should agree to its indefinite extension. After West's statement to me, we are of opinion that, until after the change of Government, any formal proposal to the American Government should be postponed.

No. 10.

Mr. Bramston to Sir J. Pauncefoot.—(Received February 25.)

Sir,

Downing Street, February 24, 1885.

I AM directed by the Earl of Derby to transmit to you, for the consideration of Earl Granville, in connection with the telegraphic correspondence which was inclosed in the letter from this Department of the 13th instant, a copy of a despatch from the Governor of Canada, with its inclosures, relating to the proposal for the extension of the Fishery Articles of the Treaty of Washington to the 1st January, 1886.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 10.

The Marquis of Lansdowne to the Earl of Derby.

My Lord,

Government House, Ottawa, February 4, 1885.

WITH reference to your Lordship's telegram of this day's date, and to paragraph 7 in my despatch of the 26th December, in which I stated "that should such a course be acceptable to the Government of the United States we shall be prepared to agree to an extension of the operation of the clauses in regard both to 'free fishing' and to 'free fish' until the 1st January, 1886," I have the honour to inform your Lordship that I have received a private letter from Mr. West, inclosing copy of a letter which he has received from the Secretary of State for the United States, in which Mr. Frelinghuysen advises him that after consultation with leading Senators he has come to the conclusion that it would be impossible, under present circumstances, to carry out the suggestion that the operation of the Fishery Clauses of the Treaty of Washington should be extended until the 1st January, 1886.

2. Mr. Frelinghuysen suggests that a Presidential Proclamation should be issued notifying the expiration of the Treaty on the 1st July, and the withdrawal after that date of the privilege of fishing in Canadian waters hitherto enjoyed by American fishermen.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 10.

Mr. West to the Marquis of Lansdowne.

Dear Lord Lansdowne,

Washington, January 25, 1885.

WITH reference to my letter of the 3rd instant, I now inclose copy of a communication from the Secretary of State respecting the postponement of the termination of the Fishery Articles of the Treaty of Washington.

Very truly, &c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure 3 in No. 10.

Mr. Frelinghuysen to Mr. West.

Dear Mr. West,

Department of State, Washington, January 20, 1885.

WITH reference to your note of the 3rd instant, proposing a postponement of the termination of the Fishery Articles of the Treaty of Washington of 1871 until the 1st January, 1886, I have now to inform you that after consultation upon the subject with leading Senators it is deemed impracticable at this late day to carry out your suggestions.

It is believed, however, that by a Presidential Proclamation issued now to the effect that the Fishery Articles of the Treaty will expire on the 1st July next, and that none of the privileges secured by that Treaty will any longer exist, and that American fishermen are warned to govern themselves accordingly, and to keep outside of the jurisdictional line of Her Majesty's territories, much of the trouble which you anticipate will be avoided.

Yours, &c.

(Signed)

FREDK. T. FRELINGHUYSEN.

No. 11.

Mr. Lowell to Earl Granville.—(Received March 5.)

My Lord,

Legation of the United States, London, March 3, 1885.

I HAVE the honour to acquaint you that I have received to-day a number of copies of the President's Proclamation of the 31st January last, giving notice that certain Articles of the Treaty of Washington of the 8th May, 1871, will terminate on the 1st July next; and I beg leave, in compliance with my instructions, to communicate three copies of this Proclamation informally to Her Britannic Majesty's Government.

I have, &c.

(Signed)

J. R. LOWELL.

Inclosure in No. 11.

By the President of the United States of America.

A Proclamation.

WHEREAS the Treaty concluded between the United States of America and Her Majesty the Queen of Great Britain and Ireland, concluded at Washington on the 8th day of May, 1871, contains among other Articles the following, viz. :—

"ARTICLE XVIII.

"It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the Convention between the United States and Great Britain signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in

Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks, of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

"ARTICLE XIX.

"It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the 39th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

"ARTICLE XX.

"It is agreed that the places designated by the Commissioners appointed under the 1st Article of the Treaty between the United States and Great Britain concluded at Washington on the 5th June, 1854, upon the coasts of Her Britannic Majesty's dominions and the United States as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of the United States and of Her Britannic Majesty as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority, as the Commission appointed under said 1st Article of the Treaty of the 5th June, 1854.

"ARTICLE XXI.

"It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country respectively free of duty.

"ARTICLE XXII.

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine (having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty) the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may

no award shall be paid by the United States' Government, in a gross sum, within twelve months after such Award shall have been given.

"ARTICLE XXIII.

"The Commissioners referred in in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

"The Commissioners so named shall meet in the city of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the records of their proceedings.

"Each of the High Contracting Parties shall also name one person to attend the Commission as its Agent, to represent it generally in all matters connected with the Commission.

"ARTICLE XXIV.

"The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

"If in the case submitted to the Commissioners either party shall have specified or alluded to any Report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

"The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

"ARTICLE XXV.

"The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

"Each of the High Contracting Parties shall pay its own Commissioner and Agent or counsel; all other expenses shall be defrayed by the two Governments in equal moieties."

"ARTICLE XXX.

"It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, subjects of Her Britannic Majesty may carry in British vessels, without payment of duty, goods, wares, or merchandize from one port or place within the territory of the United States upon the St. Lawrence, the Great Lakes, and the rivers connecting the same, to another port or place within the territory of the United States as aforesaid: Provided, That a portion of such transportation is made through the Dominion of Canada by land carriage and in bond, under such rules and regulations

as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States.

"Citizens of the United States may for the like period carry in United States' vessels, without payment of duty, goods, wares or merchandise from one port or place within the possessions of Her Britannic Majesty in North America to another port or place within the said possessions: Provided, That a portion of such transportation is made through the territory of the United States by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of the United States and the Government of Her Britannic Majesty.

"The Government of the United States further engage not to impose any export duties on goods, wares, or merchandize carried under this Article through the territory of the United States; and Her Majesty's Government engage to urge the Parliament of the Dominion of Canada and the Legislatures of the other Colonies not to impose any export duties on goods, wares, or merchandize carried under this Article; and the Government of the United States may, in case such export duties are imposed by the Dominion of Canada, suspend, during the period that such duties are imposed, the right of carrying granted under this Article in favour of the subjects of Her Britannic Majesty.

"The Government of the United States may suspend the right of carrying granted in favour of the subjects of Her Britannic Majesty under this Article, in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals in the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in Article XXVII."

"ARTICLE XXXII.

"It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect by either of the legislative bodies aforesaid shall not in any way impair any other Articles of this Treaty."

And whereas, pursuant to the provisions of Article XXXIII of said Treaty, due notice has been given to the Government of Her Britannic Majesty of the intention of the Government of the United States of America to terminate the above-recited Articles of the Treaty in question on the 1st day of July, 1885;

And whereas, pursuant to the terms of said Treaty, and of the notice given thereunder by the Government of the United States of America to that of Her Britannic Majesty, the above-recited Articles of the Treaty of Washington, concluded 8th May, 1871, will expire and terminate on the 1st day of July, 1885;

Now, therefore, I, Chester A. Arthur, President of the United States of America, do hereby give public notice that Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXX, and XXXII of the Treaty of Washington, concluded 8th May, 1871, will expire and terminate on the 1st day of July, 1885, and all citizens of the United States are hereby warned that none of the privileges secured by the above-recited Articles of the Treaty in question will exist after the 1st day of July next; all American fishermen should govern themselves accordingly.

Done at the city of Washington, this 31st day of January, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth.

(Seal) CHESTER A. ARTHUR.

By the President:

(Signed) FREDK. T. FRELINGHUYSEN,
Secretary of State.

Mr. Bramston to Sir J. Panncofote.—(Received March 9.)

Sir,

Downing Street, March 7, 1885.

WITH reference to the letter from this Department of the 3th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before Earl Granville, a copy of a despatch from the Governor-General of Canada in connection with the question of the temporary extension of those clauses in the Treaty of Washington which are affected by the notice given by the Government of the United States.

I am at the same time to transmit copies of despatches from Lord Lansdowne, containing the substance of the two telegrams from himself, copies of which accompanied the letter above referred to.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 12.

The Marquis of Lansdowne to the Earl of Derby.

My Lord,

Government House, Ottawa, February 9, 1885.

I HAD the honour to send to your Lordship, on the 4th instant, a message in which I stated, in reply to your Lordship's telegram of the same date, that it was understood by us that the notice terminates the Fisheries Clauses only of the Treaty, including those clauses by which access to our waters is given to the American fishermen, and also the clauses which admit fish into the United States free of duty. I added that we were willing to have both extended till the 1st January, 1886, but that I had been privately informed by Mr. West that the United States' Secretary of State had intimated to him that this arrangement at this late date was thought to be impracticable.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 12.

The Marquis of Lansdowne to the Earl of Derby.

My Lord,

Government House, Ottawa, February 10, 1885.

I HAD the honour to send to your Lordship on the 7th instant a message acknowledging your Lordship's telegram of the 6th instant, and stating that we are prepared to extend Article XXX as well as the Fishery Clauses till January. I also stated that it will not be necessary to extend Articles XXII to XXV, as the question of further payment would not be brought forward; that we should agree to the indefinite extension of Article XXX inasmuch as it has no bearing upon the Fishery question; and that after Mr. West's statement to me we are of opinion that until after the change of Government any formal proposition to the United States' Government should be postponed.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 3 in No. 12.

The Marquis of Lansdowne to the Earl of Derby.

My Lord,

Government House, Ottawa, February 10, 1885.

I HAVE the honour to make the following observations with reference to my telegram of the 7th instant, upon the subject of the temporary extension of those clauses in the Treaty of Washington of the termination of which notice has been given by the Government of the United States.

2. The Articles affected by the notice in question are, as your Lordship pointed

out, Nos. XVIII to XXV inclusive, and No. XXX. Of these, XVIII to XXI inclusive have reference to the conditions under which the Contracting Parties are to be admitted to the territorial waters and coasts of either country, and to the admission into each country free of duty of the fish and fish products of the other.

It is against these clauses that the steps taken by the Government of Washington have, it is understood, been specially directed.

3. Articles XXII to XXV, inclusive, relate to the arrangements for the Arbitration held at Halifax subsequent to the conclusion of the Treaty. As in the event of a temporary extension of Articles XVIII to XXI until the 1st January, 1886, my Government would not raise the question of any payment in addition to that already made under the Halifax Award, in consideration of the prolongation of the time during which American fishermen would have the privilege of access to Canadian waters, the renewal of Articles XXII to XXV would be without effect.

4. Article XXX, which is also affected by the notice, has reference to an entirely distinct subject, viz., the relaxation under certain circumstances of the Coasting Laws of the two countries.

Under this Article a Canadian vessel can, e.g., carry a cargo from Chicago to Oswego on Lake Ontario, notwithstanding the Coasting Laws of the United States, a portion of such cargo being conveyed in bond, over the Welland Railway, which connects Lakes Erie and Ontario. Such a vessel would land part of her cargo at the Erie Terminus of the Welland Railway, so as to enable her to pass through the Welland Canal, and would reshipe the landed cargo at the Ontario Terminus.

5. My Government would be glad to have the operation of this clause, which has no relation whatever to the Fishery question, continued, and as I stated in my telegram to your Lordship, such a continuation might be for an indefinite time.

6. They are, however, of opinion that, considering Mr. West's intimation to me, of the nature of which your Lordship is already aware, it would probably not be desirable to make any formal proposal in regard to these matters until after the accession of President Cleveland's Administration.

I have, &c.
(Signed) LANSDOWNE.

No. 13.

Earl Granville to Mr. West.

(Telegraphic.)

Foreign Office, April 20, 1885, 6.15 P.M.

ASK United States' Government whether they will agree to prolong the operation of Articles XVIII, XIX, XX, XXI, and XXX of the Treaty of Washington from 1st July to 1st January, 1886. This proposal is made to afford time to negotiate more permanent settlement of Fishery question. If United States' Government agree, Her Majesty's Government would be prepared to commence negotiations at once.

No. 14.

Mr. West to the Marquis of Salisbury.—(Received July 10.)*

My Lord,

Washington, June 29, 1885.

I HAVE the honour to inclose to your Lordship herewith copy of the notice, and of the correspondence which has been published in relation to the temporary arrangement which has been entered into between Her Majesty's Government and the Government of the United States in consequence of the expiration of the Fishery Articles of the Treaty of Washington on the 1st July next.

I have, &c.
(Signed) L. S. SACKVILLE WEST.

* Copy to Colonial Office, July 11, 1885.

Inclosure in No. 14.

Agreement between the United States and Great Britain respecting the Fisheries, concluded June 22, 1885.

Notice

BY direction of the President, the Undersigned, Secretary of State, hereby makes known to all whom it may concern, that a temporary Diplomatic Agreement has been entered into between the Government of the United States and the Government of Her Britannic Majesty, in relation to the fishing privileges which were granted by the Fishery Clauses of the Treaty between the United States and Great Britain of the 8th May, 1871, whereby the privilege of fishing, which would otherwise have terminated with the Treaty Clauses on the 1st July proximo, may continue to be enjoyed by the citizens and subjects of the two countries engaged in fishing operations throughout the season of 1885.

This Agreement proceeds from the mutual good-will of the two Governments, and has been reached solely to avoid all misunderstanding and difficulties which might otherwise arise from the abrupt termination of the fishing of 1885 in the midst of the season. The immunity which is accorded by this Agreement to the vessels belonging to citizens of the United States engaged in fishing in the British American waters will likewise be extended to British vessels and subjects engaged in fishing in the waters of the United States.

The Joint Resolution of Congress of the 3rd March, 1883, providing for the termination of the Fishing Articles of the Treaty of the 8th May, 1871, having repealed in terms the Act of the 1st March, 1873, for the execution of the Fishing Articles, and that repeal being express and absolute from the date of the termination of the said Fishing Articles, under due notification given and proclaimed by the President of the United States, to wit, the 1st July, 1885, the present temporary Agreement in no way affects the question of statutory enactment or exemption from customs duties, as to which the abrogation of the Fishing Articles remains complete.

As part of this Agreement, the President will bring the whole question of the fisheries before Congress at its next Session in December, and recommend the appointment of a Joint Commission by the Governments of the United States and Great Britain to consider the matter, in the interest of maintaining good neighbourhood and friendly intercourse between the two countries, thus affording a prospect of negotiation for the development and extension of trade between the United States and British North America.

Copies of the Memoranda and exchanged notes on which this temporary Agreement rests are appended.

Reference is also made to the President's Proclamation of the 31st January, 1885, terminating the Fishing Articles of the Treaty of Washington.

By direction of the President.

(Signed) T. F. BAYARD, *Secretary of State.*

APPENDICES.

(1.)

Memorandum by Mr. West.

The Fishery Clauses of the Treaty of Washington of 1871 will expire in July next. When the time comes, American vessels will be actually engaged in fishing within the territorial waters of the Dominion. These vessels, it may be presumed, would have been fitted out for the season's fishing, and their arrangements would have been made for following it out until its termination in the autumn. If, under these circumstances, the Dominion Government were to insist upon their rights and to compel such vessels, on pain of seizure, to desist from fishing, much hardship and ill-feeling would result. To avoid this complication, it is suggested that the two Governments should agree to extend the clauses in operation until the 1st January, 1886. If this were done, the existing state of things would come to an end between the fishery seasons of 1885 and 1886, and an abrupt transition, when fishing operations were in progress, be thus avoided.

March 12, 1885.

Mr. Bayard to Mr. West.

Dear Mr. West,

Department of State, Washington, April 22, 1885.

I have on several occasions lately, in conversation, acquainted you with my interest in the Fisheries Memorandum which accompanied your personal letter of the 12th March.

Several informal talks I have had with Sir Ambrose Shea have enabled me to formulate the views of this Government upon the proposition made in behalf of the Dominion and the Province of Newfoundland, and I take pleasure in handing you herewith a Memorandum embodying the results. If this suits, I shall be happy to confirm the arrangement by an exchange of notes at your early convenience.

I am, &c.

(Signed) T. F. BAYARD.

Memorandum.

The legislation passed by the Congress of the United States, Act of the 1st March, 1873, for the execution of the Fishery Articles of the Treaty of Washington, has been repealed by Joint Resolution of the 3rd March, 1883, the repeal to take effect on the 1st July, 1885. From that date the effects of the Fishery Articles of the Treaty of Washington absolutely determine, so far as their execution within the jurisdiction of the United States is concerned, and without new legislation by Congress modifying or postponing that repeal, the Executive is not constitutionally competent to extend the reciprocal fisheries provisions of the Treaty beyond the 1st July next, the date fixed by the action of Congress.

Mr. West's Memorandum of the 12th March, 1885, suggests the mutual practical convenience that would accrue from allowing the fishing ventures commenced prior to the 1st July, 1885, to continue until the end of the season for fishing of that year, thus preventing their abrupt termination in the midst of fishing operations on the 1st July.

It has been, moreover, suggested on the part of the Province of Newfoundland and of the Dominion of Canada that, in view of the mutual benefit and convenience of the present local traffic, consisting of the purchase of ice, bait, wood, and general ship supplies by the citizens of the United States engaged in fishing from the inhabitants of the British American fishing coast, the usual operations of the fishing season of 1885 should be continued by the fishing-vessels belonging to the citizens of the United States until the end of the season of that year, and that the local authorities of Newfoundland and of the Dominion of Canada, in a spirit of amity and good neighbourhood, should abstain from molesting such fishermen or impeding their progress or their local traffic with the inhabitants incidental to fishing during the remainder of the season of 1885, and all this with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at the next Session in December, and recommend the appointment of a Commission in which the Governments of the United States and of Great Britain should be respectively represented, which Commission should be charged with the consideration and settlement, upon a just, equitable, and honourable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America.

The President of the United States would be prepared to recommend the adoption of such action by Congress, with the understanding that, in view and in consideration of such promised recommendation, there would be no enforcement of restrictive and penal laws and regulations by the authorities of the Dominion of Canada or of the Province of Newfoundland against the fishermen of the United States resorting to British American waters between the 1st July next and the close of the present year's fishing season; the mutual object and intent being to avoid any annoyance to the individuals engaged in this business and traffic, and the irritation or ill-feeling that might be engendered by a harsh or vexatious enforcement of stringent local regulations on the fishing coast pending an effort to have a just and amicable arrangement of an important and somewhat delicate question between the two nations.

Public knowledge of this understanding and arrangement can be given by an exchange of notes between Mr. West and myself, which can be given to the press.

April 21, 1885.

[*Mr. West's Memoranda of June 18, 1885.*]

It is proposed to state in notes recording temporary arrangement respecting fisheries, that an Agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America.

The Government of Newfoundland do not make refunding of duties a condition of their acceptance of the proposed Agreement, but they rely on it having due consideration before the International Commission which may be appointed.

(4.)

Mr. Bayard to Mr. West.

My dear Mr. West,

Department of State, Washington, June 19, 1885.

I assume that the two confidential Memoranda you handed to me on the 13th instant embrace the acceptance by the Dominion and the British American coast provinces of the general features of my Memorandum of the 21st April, concerning a temporary arrangement respecting the fisheries, with the understanding expressed on their side that the "agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America."

To such a contingent understanding I can have no objection. Indeed, I regard it as covered by the statement in my Memorandum of the 21st April, that the arrangement therein contemplated would be reached "with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at its next Session in December, and recommend the appointment of a Commission in which the Governments of the United States and of Great Britain should be respectively represented, which Commission should be charged with the consideration and settlement, upon a just, equitable, and honourable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America."

The equities of the question, being before such a Mixed Commission, would doubtless have the fullest latitude of expression and treatment on both sides; and the purpose in view being the maintenance of good neighbourhood and intercourse between the two countries, the recommendation of any measures which the Commission might deem necessary to attain these ends would seem to fall within its province, and such recommendations could not fail to receive attentive consideration.

I am not, therefore, prepared to state limits to the proposals to be brought forward in the suggested Commission on behalf of either party.

I believe this statement will be satisfactory to you, and I shall be pleased to be informed at the earliest day practicable of your acceptance of the understanding on behalf of British North America; and by this simple exchange of notes and Memoranda the Agreement will be completed in season to enable the President to make the result publicly known to the citizens engaged in the fishing on the British American Atlantic coast.

I have, &c.

(Signed) T. F. BAYARD.

(5.)

Mr. West to Mr. Bayard.

My dear Mr. Bayard,

Washington, June 20, 1885.

I beg to acknowledge the receipt of your confidential note of yesterday's date concerning the proposed temporary arrangement respecting the fisheries, which I am authorized by Her Majesty's Government to negotiate with you, on behalf of the Government of the Dominion of Canada and the Government of Newfoundland, to be effected by an exchange of notes founded on your Memorandum of the 21st April last.

The two confidential Memoranda which I handed to you on the 18th instant contain, as you assume, the acceptance by the Dominion and by the British American coast provinces of the general features of your above-mentioned Memorandum, with the understanding expressed on their side that the agreement has been arrived at under circumstances affording prospect of negotiation for the development and extension of trade between the United States and British North America, a contingent understanding to which, as you state, you can have no objection, as you regard it as covered by the terms of your Memorandum of the 21st April.

In authorizing me to negotiate this agreement, Earl Granville states, as I have already had occasion to intimate to you, that it is on the distinct understanding that it is a temporary one, and that its conclusion must not be held to prejudice any claim which may be advanced to more satisfactory equivalents by the Colonial Governments, in the course of the negotiation for a more permanent settlement. Earl Granville further wishes me to tell you that Her Majesty Government and the Colonial Governments have consented to the arrangement solely as a mark of good-will to the Government and people of the United States, and to avoid difficulties which might be raised by the termination of the Fishery Articles in the midst of a fishing season, and also that the acceptance of such a *modus vivendi* does not by any implication affect the value of the inshore fisheries by the Governments of Canada and Newfoundland.

I had occasion to remark to you that while the Colonial Governments are asked to guarantee immunity from interference to American vessels resorting to Canadian waters, no such immunity is offered in your Memorandum to Canadian vessels resorting to American waters, but that the Dominion Government presumed that the agreement, in this respect, would be mutual. As you accepted this view, it would, I think, be as well that mention should be made to this effect in the notes. Under the reservations as above indicated, in which I believe you acquiesce, I am prepared to accept the understanding on behalf of British North America, and to exchange notes in the above sense.

I have, &c.
(Signed) L. S. SACKVILLE WEST.

(6.)

Mr. Bayard to Mr. West.

Sir, *Department of State, Washington, June 20, 1885.*
I have just received your note of to-day's date in regard to the proposed temporary arrangement regarding the fisheries.

Undoubtedly it is our clear and mutual understanding that the arrangement now made is only temporary, and that it proceeds from the mutual good-will of our respective Governments, and solely to avoid all difficulties which might otherwise arise from the termination of the fishing of 1885 in the midst of the season.

I understand also that the same immunity which is accorded by this agreement to the vessels belonging to the citizens of the United States engaged in fishing in the British American waters will be extended to British vessels and subjects engaged in fishing in the waters of the United States.

Perceiving, therefore, no substantial difference between our respective propositions and these statements as contained in our correspondence on the subject, I shall consider the agreement as embodied in our Memoranda and the correspondence between us, and as thus concluded, and public notification to that effect will be given in a few days by the President.

I have, &c.
(Signed) T. F. BAYARD.

(7.)

Mr. Bayard to Mr. West.

Sir, *Department of State, Washington, June 22, 1885.*
In compliance with your verbal request of this morning that I should restate part of my note to you of the 19th, I repeat that the arrangement whereby a

modus vivendi on the fishing question has been reached rests on the Memoranda and correspondence exchanged; that your Memorandum of the 18th instant expressed the understanding on your side that the "agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United and British North America;" that I not only had no objection to such an understanding, but, in fact, regarded it as amply embraced in our proposal to recommend a Commission to deal with the whole subject in the interest of good neighbourhood and intercourse; and that the recommendation of any measures which the Commission might deem necessary to attain those ends would seem to fall within its province, and such recommendations could not fail to have attentive consideration.

Having thus not only admitted the proviso of your Memorandum in your own language, but gone still further, and pointed out that no limits would be set, so far as I was concerned, to the proposals to be brought forward in the suggested Commission, on behalf of either party, I do not see how it is possible for me to give any stronger assurance that the understanding has "been reached under circumstances affording a prospect of negotiation for the development and extension of trade between the United States and British America."

I have, &c.
(Signed) T. F. BAYARD.

(8.)

Mr. West to Mr. Bayard.

Sir,

I have the honour to acknowledge the receipt of your notes of the 20th and 22nd instant in regard to the proposed temporary arrangement touching the fisheries, in which you state that it is our clear and mutual understanding that such arrangement is only temporary, and that it proceeds from mutual good-will of our respective Governments, and solely to avoid all difficulties which might otherwise arise from the termination of the fishing of 1885 in the midst of the season. Also that the same immunity which is accorded by this agreement to the vessels belonging to the citizens of the United States engaged in fishing in the British American waters will be extended to British vessels and subjects engaged in fishing in the waters of the United States, and that the agreement has been reached under circumstances affording a prospect of negotiation for the development and extension of trade between the United States and British North America.

As, therefore, there exists no substantial difference between our respective propositions and the statements as contained in our correspondence on the subject, I shall consider the agreement, as embodied in our Memoranda and the correspondence between us, as thus concluded, and shall inform Her Majesty's Government and the Governments of the Dominion of Canada and Newfoundland accordingly.

I have, &c.
(Signed) L. S. SACKVILLE WEST.

(9.)

Proclamation by the President of the United States, dated January 31, 1885.

[See Inclosure in No. 11.]

No. 15.

Sir R. Herbert to Sir J. Pouncefote.—(Received July 17.)

(Extract.)

Downing Street, July 16, 1885.

I AM to take this opportunity of inclosing the draft of a despatch which, with Lord Salisbury's concurrence, Colonel Stanley proposes to address to the Governor-General of Canada, and to the Officer administering the Government of Newfoundland, with regard to the arrangement made with the United States' Government.

Inclosure in No. 15.

*Draft Despatch to the Marquis of Lansdowne and to the Officer administering the Government of Newfoundland.**

My Lord,

Sir,

Downing Street, July , 1885.

I UNDERSTAND that Her Majesty's Minister at Washington has communicated to you copies of the notes which have been exchanged between himself and the Government of the United States recording the arrangement recently arrived at with that Government upon the subject of the fisheries.

Her Majesty's Government trust that the terms of the arrangement made between Mr. West and Mr. Bayard are satisfactory to your Government.

I have, &c.

No. 16.

Sir J. Pouncefote to Sir R. Herbert.

Sir,

Foreign Office, July 18, 1885.

WITH reference to my letter of the 11th instant on the subject of the temporary arrangement with the United States relative to the fisheries, I am directed by the Marquis of Salisbury to suggest, for Colonel Stanley's consideration, that it would be desirable to call the attention of the Governments of Canada and Newfoundland to the necessity of arriving at a conclusion as to the course to be adopted in anticipation of the coming negotiations, for the successful conduct of which it will be necessary not only to be prepared with accurate information on all the points likely to be raised, but also to decide in advance on the exact nature of the proposals which it will be desirable to make in the interests of both Colonies.

I am at the same time to inquire whether Colonel Stanley is of opinion that any further, and if so what, action should be taken at present.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 17.

Sir J. Pouncefote to Sir R. Herbert.

Sir,

Foreign Office, July 20, 1885.

IN reply to your letter of the 16th instant, I am directed by the Marquis of Salisbury to state to you, for the information of Colonel Stanley, that his Lordship concurs in the terms of the despatch which it is proposed to address to the Governors of Canada and Newfoundland concerning the temporary arrangement with the United States respecting the fisheries.

I am to add that Sir L. West has been instructed, by telegraph, to send to both Colonies copies of the correspondence on the subject which has been published in the United States.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 18.

Mr. Bramston to Sir J. Pouncefote.—(Received August 24.)

Sir,

Downing Street, August 22, 1885.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 18th ultimo, suggesting that it would be desirable to call the attention of the Governments of Canada and Newfoundland to the necessity of arriving at a conclusion as to the course to be adopted in anticipation of the coming negotiations in view of the termination of the temporary arrangement with the

* The despatch was sent, dated the 21st July, 1885.

United States relative to the fisheries; and I am to request that you will inform the Marquis of Salisbury that Colonel Stanley addressed telegrams to the Governor-General of Canada and to the Officer administering the Government of Newfoundland in this sense.

A copy of the despatches containing the substance of these telegrams is annexed for Lord Salisbury's information.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure in No. 18.

*Colonel Stanley to the Marquis of Lansdowne.**

My Lord,

Downing Street, August 11, 1885.

ON the 1st instant I sent you a telegram in which I informed you that Her Majesty's Government deemed it desirable that steps should be taken by your Government, in concert with the Government of Newfoundland, to decide definitively on the exact nature of the proposals to be made to the Government of the United States in anticipation of the negotiations which are contemplated in view of the termination of the temporary arrangement lately made between Her Majesty's Minister at Washington and the United States' Government arising out of the termination of the Fishery Articles of the Treaty of Washington on the 1st of last month. I informed you to the effect that all points likely to be involved in the coming negotiations should be carefully considered, and information respecting them prepared in good time.

I now inclose a copy of a letter from the Foreign Office, on which my telegram was founded.

I should be glad if you will apprise me of the result of the communications which may pass between your Government and that of Newfoundland upon this subject.

I have, &c.
(Signed) F. STANLEY.

No. 19.

Mr. Meade to Sir J. Pouncefote.—(Received September 7.)

Sir,

Downing Street, September 5, 1885.

WITH reference to the letter from this Department of the 16th, and to your reply of the 20th July, respecting the terms of the despatches to be addressed to Canada and Newfoundland in connection with the arrangement recently arrived at with the United States on the subject of fisheries, I am directed by the Secretary of State for the Colonies to transmit to you, for such action as the Marquis of Salisbury may wish to take, a copy of a despatch from the Governor-General of Canada, with its inclosures, conveying an expression of the high appreciation entertained by the Government of the Dominion of the ability shown by Her Majesty's Minister at Washington in conducting the negotiations.

I am, &c.
(Signed) R. H. MEADE.

Inclosure 1 in No. 19.

The Marquis of Lansdowne to Colonel Stanley.

Sir,

Government House, Ottawa, August 21, 1885.

WITH reference to your despatch of the 21st ultimo, I have the honour to inclose herewith a copy of an approved Report of a Committee of the Privy Council expressing the satisfaction of my Government with the arrangement respecting the fisheries which has been concluded with the United States, and their high appreciation of the ability with which Her Majesty's Minister at Washington has conducted the negotiations in the matter.

I have forwarded a copy of this Minute of Council to Sir Lionel Sackville West.

I have, &c.
(Signed) LANSDOWNE.

* Also to the Governor of Newfoundland.

Inclosure 2 in No. 19.

Report of the Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General on the 4th August, 1885.

THE Committee of the Privy Council have had under consideration a despatch, dated the 21st July, 1885, from the Right Honourable the Secretary of State for the Colonies, expressing the hope that the terms of the arrangement made between the British Ambassador at Washington and Mr. Bayard on the subject of the fisheries would be satisfactory to the Canadian Government.

The Committee desire to state to your Excellency that such arrangement is perfectly satisfactory; and they further beg to express their high appreciation of the able manner in which Her Majesty's Minister at Washington, Sir Sackville West, conducted the negotiations.

The Committee advise that your Excellency be moved to transmit a copy of this Minute to the Right Honourable the Secretary of State for the Colonies and to the British Ambassador at Washington.

All of which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

No. 20.

Mr. Meade to Sir J. Pouncefote.—(Received September 21.)

Sir,
Downing Street, September 19, 1885.
WITH reference to the letter from this Department of the 22nd ultimo, relating to the course to be adopted in anticipation of the coming negotiations in view of the termination of the temporary arrangement with the Government of the United States relative to the fisheries, I am directed by Colonel Stanley to transmit to you, for the information of the Marquis of Salisbury, copies of despatches from the Governor-General of Canada and from the Officer administering the Government of Newfoundland upon this subject.

I am, &c.
(Signed) R. H. MEADE.

Inclosure 1 in No. 20.

The Marquis of Lansdowne to Colonel Stanley.

Sir,
Government House, Ottawa, September 4, 1885.
WITH reference to your despatch of the 11th ultimo, expressing the desire of Her Majesty's Government that my Government and that of Newfoundland should take steps towards defining the exact nature of the proposals to be made to the Government of the United States in anticipation of the negotiations which are contemplated in view of the termination of the temporary arrangement recently concluded respecting the fisheries, I have the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council, from which it will be seen that communications will at once be opened with the Government of Newfoundland in order to secure a discussion of the whole question between the two Governments.

I have to-day communicated by cable with the Governor of Newfoundland in this matter.

I have, &c.
(Signed) LANSDOWNE.

Inclosure 2 in No. 20.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 3rd September, 1885.

THE Committee of the Privy Council have had under consideration a despatch dated the 11th August, 1885, from the Right Honourable the Secretary of State for

the Colonies, advising that Her Majesty's Government deemed it desirable that steps should be taken by the Canadian Government, in concert with the Government of Newfoundland, to decide definitively on the exact nature of the proposals to be made to the Government of the United States in anticipation of the negotiations which are contemplated in view of the termination of the temporary arrangement lately made between Her Majesty's Minister at Washington and the United States' Government, arising out of the termination of the Fishery Articles of the Treaty of Washington on the 1st July last.

The Right Honourable the President of the Council, to whom the despatch was referred, recommends that communications should be had, both by cable and letter, inviting the Government of Newfoundland either to send a Representative to Ottawa to discuss the whole question, or, if that be inconvenient, to communicate the views of the Island Government.

The Committee concur in the recommendation of the President of the Council, and they advise that your Excellency be moved to transmit a copy of this Minute, if approved, to his Excellency the Governor of Newfoundland, and also to the Right Honourable the Secretary of State for the Colonies, so as to inform him of the action taken by the Canadian Government on his despatch of the 11th August ultimo.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

Inclosure 3 in No. 20.

Administrator Sir F. Carter to Colonel Stanley.

Sir,

Government House, Newfoundland, August 31, 1885.

WITH reference to your despatch of the 11th August instant respecting the proposals to be made to the Government of the United States in view of the negotiations contemplated in connection with the termination of the Fishery Articles of the Treaty of Washington, I have the honour to state that the Government of this Colony has communicated with that of the Dominion of Canada on this subject, but, as yet, no reply has been received.

I have, &c.
(Signed) F. B. T. CARTER.

No. 21.

The Marquis of Salisbury to Sir L. West.

Sir,

Foreign Office, September 26, 1885.

I TRANSMIT to you herewith a copy of a letter from the Colonial Office, inclosing a copy of a despatch from the Governor-General of Canada, with its inclosure, conveying an expression of the high appreciation entertained by the Government of the Dominion of the able manner in which you conducted the negotiations in connection with the arrangement recently arrived at with the United States on the subject of fisheries.*

I have received this communication with great satisfaction, and I have now to express to you the approval of Her Majesty's Government for your action in the matter.

I am, &c.
(Signed) SALISBURY.

No. 22.

Sir L. West to the Marquis of Salisbury.†—(Received October 23.)

My Lord,

Washington, October 10, 1885.

✓ IN connection with the Fisheries question I have the honour to inclose to your Lordship herewith copies of a Circular issued by a Committee of the Boston Fish Bureau, and to inform your Lordship that I have called the attention of the Secretary of State thereto.

I have, &c.
(Signed) L. S. SACKVILLE WEST.

* No. 19.

† Copy to Colonial Office, October 27.

Inclosure in No. 22.

Circular.

Boston, September 1885.

Dear Sir,

THE Boston Fish Bureau, an organization composed of the principal wholesale dealers and commission merchants in fish of this city, has passed the following Resolution:—

"Resolved, that the Boston Fish Bureau earnestly favours such an arrangement between the United States, the Dominion of Canada, and the Province of Newfoundland as shall include the reciprocal admission, free of duties, of the products of the fisheries of these countries."

We desire to present the reasons for this Resolution, and to appeal to the dealers in, and consumers of, fish throughout the country, to aid us in impressing upon Congress the importance of free importation of fish from the British provinces. It is well known that the New England fisheries do not produce certain varieties of fish which the trade requires, and of certain other kinds the supply obtained on our coast is entirely inadequate to our needs. We are obliged to rely entirely upon the provinces for our stock of fat herring and for the larger part of the cheaper grades of herring, both pickled and smoked, of alewives, salmon, trout, and shad. We need the hard dried codfish of Newfoundland, and the choice slack-salted codfish and pollock of Nova Scotia. For several years past the mackerel caught in American waters have been mostly of small size, and we have needed the larger fish caught in Canadian waters. During the past two winters we could not have filled orders for large fat mackerel except for the supply obtained from Nova Scotia and Prince Edward Island. Present indications point to a repetition of this condition during the coming winter. Whatever we need from Canada must be obtained at the additional expense of the duties, which the consumer must pay. The duties, being specific, bear very heavily on the cheaper grades of fish, amounting in many cases to from 50 per cent. to 100 per cent. on the original cost, and resulting in a prohibition of imports or a very largely enhanced cost to the consumer.

The people who will gain anything by the exaction of duties are a few hundred vessel-owners in New England. The pretence that protective duties on fish is an encouragement to American fishermen, and the argument that the fisheries furnish a training school for our navy, were long since exploded by the fact that a very large proportion of the men who fish in American vessels are citizens of the British provinces. Hordes of them come here every spring, man our vessels for the fishing season, and return home when it is over. It is estimated that from 50 per cent. to 75 per cent. of the men in the Gloucester mackerel fleet are citizens of the Dominion of Canada, and the same is true to a greater or less extent of other fishing ports. It is acknowledged that without them we would be unable to man our fleet. These men have no interest in our country and its institutions, and in the event of war with England would be found in the enemy's fleet. Is it fair that we should be taxed for their support, or that a few owners of fishing-vessels should reap an advantage obtained at the expense of the great body of consumers of fish in all parts of the country?

As dealers in fish, handling large quantities of the products of the sea, we feel that our interests are identical with yours in demanding that there should be no duties on articles of food which are consumed so largely by people of moderate means. Questions of a larger nature, involving matters of international importance, make it probable that the subject of reciprocity with Canada will come before Congress at its next Session. We ask of you that you will use your best efforts to impress upon your Senators and Representatives that they should vote upon this question in accordance with your interests and with the interests of a large majority of the people of the country.

Respectfully yours.
(Signed)

WILLIAM F. JONES,
C. W. WRIGHTINGTON,
EDWARD T. RUSSELL,
L. PICKERT,
B. F. DE BUTTS,

Committee of the Boston Fish Bureau.

Sir L. West to the Marquis of Salisbury.—(Received December 12.)

(Telegraphic.)

Washington, December 11, 1885, 11:40 P.M.

FISHERY Articles. Text of passage in President's Message:—

"In the interest of good neighbourhood and of the commercial intercourse of adjacent communities, the question of the North American Fisheries is one of much importance. Following out the intimation given by me when the extensory arrangement above described was negotiated, I recommend that the Congress provide for the appointment of a Commission, in which the Governments of the United States and Great Britain shall be respectively represented, charged with the consideration and settlement upon a just, equitable, and honourable basis of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America. The fishing interest being intimately related to other general questions dependent upon contiguity and intercourse, consideration thereof in all their equities might also properly come within the purview of such a Commission, and the fullest latitude of expression of both sides should be permitted."

No. 24.

Mr. Bramston to Sir J. Pauncefote.—(Received December 12.)

Sir,

Downing Street, December 11, 1885.

WITH reference to previous correspondence respecting the contemplated negotiations with the Government of the United States arising out of the termination of the Fishery Articles of the Treaty of Washington, I am directed by Colonel Stanley to transmit to you, for the information of the Marquis of Salisbury, a copy of a despatch from the Governor-General of Canada, inclosing a Report of the Privy Council, proposing that the Government of Newfoundland should send a Delegation to Ottawa at an early day for the purpose of conferring with the Government of the Dominion on the subject in question.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 24.

The Marquis of Lansdowne to Colonel Stanley.

Sir,

Government House, Ottawa, November 23, 1885.

WITH reference to previous correspondence relating to the anticipated negotiations on the termination of the temporary arrangement with the United States as to the fisheries, I have the honour to forward herewith, for your information, a copy of an approved Report of a Committee of the Privy Council, expressing the desire of my Ministers that the Government of Newfoundland should send a Delegation to Ottawa at an early day for the purpose of conferring with the Government of the Dominion on the subject in question.

I have sent a copy of this Minute of Council to the Officer administering the Government of Newfoundland.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 24.

Report.

THE Committee of the Privy Council have had under consideration a despatch, dated the 21st September, 1885, from the Administrator of the Government of Newfoundland, on the subject of that Colony sending a Delegate to confer with the

Government of the Dominion respecting a new Fisheries arrangement between the United States, Canada, and Newfoundland, and setting forth that in view of the number of the Executive Council of Newfoundland being reduced to four members, and the early approach of a general election, that Government did not feel itself in a position to send a Delegate to Canada, or to offer any definite expression of the views of the Colony on the important subject in question, and requesting that any further proceedings on the part of the Dominion Government be deferred until the result of the approaching election be determined, and intimating its desire to be favoured with the views of the Dominion Government.

The Minister of Marine and Fisheries, to whom the despatch was referred, recommends that, in view of the important question to be considered and the wide range any discussion with reference thereto may take, the Government of Newfoundland be informed that the Dominion Government is of the opinion that the views of the respective Governments can be much more satisfactorily exchanged by the Government of Newfoundland sending a Delegation to Ottawa for that purpose than by correspondence, and to express the hope that it may be convenient for that Government to send such Delegation at an early day to confer with your Excellency's Government on the subject to which the despatch under consideration refers.

The Committee concur in the recommendation of the Minister of Marine and Fisheries, and they advise that your Excellency be moved to transmit a copy of this Minute, if approved, to the Administrator of the Government of Newfoundland.

All which is respectfully submitted for your Excellency's approval.

(Signed)

JOHN J. MCGEE,
Clerk, Privy Council, Canada.

No. 25.

Sir J. Pauncefote to Mr. Bramston.

Sir,

Foreign Office, December 14, 1885.

I AM directed by the Marquis of Salisbury to transmit to you a copy of a telegram from Her Majesty's Minister at Washington, giving the exact text of that portion of the President's Message which relates to the appointment of a Commission to settle the Fisheries question;* and I am to request that you will move Colonel Stanley to inform his Lordship whether he is of opinion that any, and if so what, communication should be made to Sir L. West in relation thereto.

I am, &c.

(Signed)

JULIAN PAUNCEFOTE.

No. 26.

Mr. Meade to Sir J. Pauncefote.—(Received January 1, 1886.)

Sir,

Downing Street, December 31, 1885.

I AM directed by Colonel Stanley to acknowledge the receipt of your letter of the 14th instant, inclosing copy of a telegram from Her Majesty's Minister at Washington, giving the text of that portion of the Message of the President of the United States which relates to the appointment of a Commission to settle the Fisheries question.

Colonel Stanley is of opinion that Sir Lionel West should be instructed to express to Mr. Bayard the satisfaction with which Her Majesty's Government have read that portion of the President's Message which referred to the fisheries, and their readiness to join in the appointment of the proposed Commission.

Sir L. West might also suggest to Mr. Bayard at the same time the expediency of pressing matters to a conclusion as soon as possible, inasmuch as the fishing season will commence early in the spring.

I am, &c.

(Signed)

R. H. MEADE.

No. 27.

The Marquis of Salisbury to Sir L. West.

Sir, *Foreign Office, January 5, 1886.*
I HAVE to request that you will express to the Government of the United States the satisfaction with which Her Majesty's Government have observed the reference which is made in the President's Message to the Fisheries question, and to the appointment of a Mixed Commission to deal with it.

It would be desirable for you to suggest that this matter should now be pressed to a conclusion as soon as possible, as the next fishing season commences early in the spring.

I have instructed you to this effect by telegraph to-day.

I am, &c.
(Signed) SALISBURY.

No. 28.

Sir L. West to the Marquis of Salisbury.—(Received January 29.)*

(Extract.)

Washington, January 16, 1886.

I HAVE the honour to inform your Lordship that I have duly expressed to the Secretary of State the satisfaction of Her Majesty's Government at the paragraph in the President's Message in which allusion is made to the Fisheries question, and the appointment of a Commission, as conveyed in your Lordship's telegram of the 5th instant, and that to-day I had an opportunity of pressing upon him the necessity, in view of the approaching fishing season, of urging the decision of Congress in the matter.

No. 29.

Sir L. West to the Marquis of Salisbury.†—(Received February 1.)

My Lord,

Washington, January 16, 1886.

I HAVE the honour to inclose to your Lordship herewith copies of a Joint Resolution introduced into the House of Representatives for a renewal of commercial relations with the British possessions in North America, which has been referred to the Committee on Foreign Affairs.

I have, &c.
(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 29.

49th Congress, 1st Session.—H. Res. 40.

IN THE HOUSE OF REPRESENTATIVES.

January 5, 1886.—Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

MR. MAYBURY introduced the following Joint Resolution:—

Joint Resolution for Renewal of Commercial Relations with the British Possessions in North America.

Whereas the Reciprocity Treaty with Great Britain, regulating commerce and navigation between the United States and the British Colonies of North America, was terminated on the 17th March, A.D. 1866, in virtue of previous notice given by the United States; and

* Copy to Colonial Office, February 1.

† Copy to Colonial Office, February 3.

Whereas the provisions of said Treaty providing for mutual rights in certain sea fisheries, and for the free navigation of the Great Lakes, the River Saint Lawrence, and the canals connected therewith, were restored in 1871 by the Treaty of Washington, so called; and

Whereas the circumstances under which the notice of the abrogation of said Treaty of Reciprocity was made have been changed and modified by time, and unfettered trade and commerce between the British possessions in North America and the United States would now be reciprocally beneficial, advantageous, and satisfactory: therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that this Congress would look with favour and approval upon any action taken by the executive department of the Government tending to a renewal of commercial relations with the British possessions in North America by compact or Treaty, having in view the reciprocal interests of both nations.

No. 30.

Sir L. West to the Marquis of Salisbury.—(Received February 1.)*

(Extract.)

Washington, January 20, 1886.

I HAVE the honour to inclose to your Lordship herewith the official Report of a debate in the Senate on the Fisheries question which took place on a Resolution to the effect that the Senate ought not to sanction the appointment of a Commission as recommended by the President.†

Their chief arguments were—

1. That the Secretary of State had no right to enter into the temporary agreement without the consent of the Senate.

2. That the fish had, for some unexplained reason, left Canadian waters, and now resorted to American waters, and that, therefore, American fishermen did not require the renewal of fishing privileges which had cost the country 5,500,000 dollars. This last argument was ably combated by Senator Morgan, who said:—

"We have found out, according to the statement of the Senator from Massachusetts (Senator Hoar), that the fish themselves, by some new instinct, had commenced floating to our Massachusetts shores, and, therefore, we found that it was convenient and proper for us to change the fundamental law between the United States and Great Britain on the subject of the fisheries." "If that," he continued, "is not bringing the Government of the United States down upon its knees in an attitude of humiliation before the other nations of the world, I do not understand the subject. . . . It turns out that the whole trouble is that the mackerel have changed the course of their run, and that we are now making a bad bargain out of what was formerly a good one."

The Resolution has, without further debate, been referred to the Committee on Foreign Relations. On the other hand, the House Committee on Foreign Affairs have informally discussed the Fisheries question. The general sentiment is said to have been that the whole subject of the relations of the United States with Canada should receive the careful consideration of Congress.

No. 31.

Mr. Bramston to Sir J. Pauncefoot.—(Received February 19.)

Sir,

Downing Street, February 18, 1886.

I AM directed by Earl Granville to acknowledge the receipt of your letters of the 3rd and 4th instant relative to the North American Fisheries question, and to state that copies have been communicated to the High Commissioner for Canada. A copy of your letter of the 4th instant, with its first inclosure, has also been transmitted to the Governor-General in a despatch for the information of his Ministers.

* Copy to Colonial Office, February 4.

† Not printed.

Lord Granville has read with care the report of the debate in the Senate, and Sir Lionel West's despatch, and he desires to offer the following observations for the Earl of Rosebery's consideration.

The statement that the United States' fishermen no longer need permission to fish in Canadian waters in consequence of the altered habits of the mackerel, which now prefer the New England coast, is confidently made; but it may be doubted whether it can be expected to afford much prospect of peace in Canadian waters during the approaching fishing season.

It is to be noted that the objections expressed in the Senate to the proposed Commission appear to be based, principally if not entirely, on fishery considerations. The Resolution, however, introduced into both Houses, on behalf of the United States' Government, was studiously framed so as to propose, not new fishery arrangements, but general arrangements for commercial reciprocity; and the concluding words of Sir L. West's despatch of the 20th ultimo seem to indicate a belief that Congress may not be unwilling, after the Fishery question has been put aside, to consider the relations between Canada and the United States on broad and general grounds.

The question is now becoming urgent; for if, as must be anticipated notwithstanding the statements and opinions of some Senators, even a moderate number of United States' vessels fit out for, and proceed to, the Canadian fishing-grounds in April next, it will be necessary that Her Majesty's Government should be fully prepared to deal with the difficulties that will be created.

It is understood that the Canadian Government is inclined to a firm and vigorous exclusion of United States' fishermen from Canadian waters, on the ground that they have no right to be there, and that the maritime provinces of the Dominion will strongly insist on their exclusion, their fishermen possibly even taking the law into their own hands, unless Canadian fish is, as hitherto, admitted duty free into United States' ports. It will probably also be urged that if the fishery is surrendered to the United States without any equivalent, an important element of barter in a general Commercial Treaty will have been sacrificed.

Under all the circumstances, Lord Granville would suggest that it might be desirable that his Lordship and Lord Rosebery should invite Sir C. Tupper (and perhaps, also, Sir A. Galt, who, as having been Her Majesty's Commissioner in 1874, has a great knowledge of these questions), to a Conference at an early date to discuss the whole question.

I am, &c.

(Signed) JOHN BRAMSTON.

No. 32.

Sir J. Poncefote to Sir R. Herbert.

Sir,

Foreign Office, February 23, 1886.

IN reply to your letter of the 18th instant, I am directed by the Earl of Rosebery to state that his Lordship concurs in Earl Granville's suggestion that a meeting should be held at the Colonial Office, at an early date, for the purpose of consulting Sir A. Galt and Sir C. Tupper as to the proper course to be pursued in connection with the North American Fisheries question.

I am to request that the necessary arrangements may be made accordingly.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 33.

The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, March 18, 1886.

FROM the Reports which have been received in this country Her Majesty's Government conclude that the Government of the United States will not propose the appointment of an International Commission to settle the North American Fisheries question, as contemplated in the temporary arrangement concluded last summer.

Whilst Her Majesty's Government regret that they will thus be deprived of a favourable opportunity for the settlement of this long-standing question on equitable terms, they desire by every means in their power to avoid any friction which might

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be caused by the cessation of the privileges lately enjoyed by United States' fishermen.

I have therefore to request that you will sound Mr. Bayard as to whether the United States' Government propose to issue a notice warning United States' fishermen that they are now precluded from fishing in British North American territorial waters, as Her Majesty's Government are now considering the propriety of issuing a similar notice with regard to British fishermen in United States' waters.

I have instructed you in this sense by telegraph to-day.

I am, &c.
(Signed) ROSEBERRY.

No. 34.

Sir R. Herbert to Sir J. Poncefote.—(Received April 2.)

Sir,

Downing Street, March 31, 1886.

I AM directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Rosebery, with reference to the North American Fisheries question, an extract from the Speech with which the Governor-General of Canada opened, on the 25th ultimo, the fourth Session of the fifth Parliament of the Dominion.

I am, &c.
(Signed) ROBERT G. W. HERBERT.

Inclosure in No. 34.

Extract from the opening Speech of the Marquis of Lansdowne to the Legislature of Canada, on the 25th February, 1886.

SHOULD the negotiations between Her Majesty's Government and that of the United States for the appointment of a Joint Commission to adjust what is known as the "Fishery question," and to consider the best means of developing our international commerce, fail to secure any satisfactory result, you will be asked to make provision for the protection of our inshore fisheries by the extension of our present system of marine police.

No. 35.

Sir L. West to the Earl of Rosebery.—(Received April 5.)*

My Lord,

Washington, March 24, 1886.

WITH reference to my telegram of this day's date, I have the honour to inclose to your Lordship herewith copy of a note which, at the request of the Secretary of State, I addressed to him on the subject of your Lordship's telegram of the 18th instant, as well as copy of his reply thereto, informing me that it is not intended to issue any further notice to the effect that American fishermen are now precluded from fishing in British North American territorial waters.

I have, &c.
(Signed) L. S. SACKVILLE WEST.]

Inclosure 1 in No. 35.

Sir L. West to Mr. Bayard.

Sir,

Washington, March 19, 1886.

I HAVE the honour to inform you that the Earl of Rosebery has requested me to ascertain whether it is intended to give notice to the United States' fishermen that they are now precluded from fishing in British North American territorial waters, as

Her Majesty's Government are considering the expediency of issuing a reciprocal notice with regard to British fishermen in American waters.

I am, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 2 in No. 35.

Mr. Bayard to Sir L. West.

Sir,

Washington, March 23, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 19th instant, whereby you inform me that you have been requested by the Earl of Rosebery to ascertain "whether it is intended to give notice to the United States' fishermen that they are now precluded from fishing in British North American territorial waters," and to inform you, in reply, that as full and formal public notification in the premises has already been given by the President's Proclamation of the 31st January, 1885, it is not deemed necessary now to repeat it.

The temporary arrangement made between us on the 22nd June, 1885, whereby certain fishing operations on the respective coasts were not to be interfered with during the fishing season of 1885, notwithstanding the abrogation of the Fishery Articles of the Treaty of Washington, came to an end under its own expressed limitations on the 31st December last, and the Fisheries question is now understood to rest on existing Treaties, precisely as though no Fishery Articles had been incorporated in the Treaty of Washington.

In view of the enduring nature and important extent of the rights secured to American fishermen in British North American territorial waters, under the provisions of the Treaty of 1818, to take fish within the 3-mile limit on certain defined parts of the British North American coasts, and to dry and cure fish there under certain conditions, this Government has not found it necessary to give to United States' fishermen any notification that "they are now precluded from fishing in British North American territorial waters."

I have, &c.

(Signed) T. F. BAYARD.

No. 36.

Mr. Bramston to Sir J. Panncofote.—(Received April 21.)

Sir,

Downing Street, April 21, 1886.

WITH reference to previous correspondence respecting the termination of the Fishery Articles of the Treaty of Washington, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Secretary of State for Foreign Affairs, a copy of a despatch from the Governor-General of Canada, inclosing copies of instructions to fishery officers and of a Warning notice, which have been issued by the Dominion Government.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 36.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, March 25, 1886.

I HAVE the honour to forward, for your Lordship's information, a copy of the instructions which have been issued by my Minister of Marine and Fisheries for the guidance of fishery officers and ex-officio magistrates in command of the vessels which will be employed for the protection of the inshore fisheries of the Dominion.

These instructions are substantially the same as those which were issued under similar circumstances in 1870.

Your Lordship will observe that while the officers in command of the fisheries police vessels are required to take the necessary steps for strictly upholding the Treaty rights of the Dominion, they are specially enjoined to carry out their instructions in a conciliatory spirit, and with forbearance and discrimination.

I also inclose copy of "a Warning" notice which was published in reference to the same subject by the Department of Fisheries.*

I have, &c.
(Signed) LANSDOWNE.

Inclosure 2 in No. 36.

Special Instructions to Fishery Officers, ex-officio Magistrates in command of Government Steamers and Vessels, engaged as Fisheries Police Vessels, in protecting the Inshore Fisheries of Canada.

Sir,

Ottawa, March 16, 1886.

IN the performance of the special and important service to which you have been appointed you will be guided by the following instructions.

For convenience of reference, these have been divided under the different headings of *Powers, Jurisdiction, Duties, and General Directions.*

The powers with which you are invested are derived from, and to be exercised in accordance with, the following Statutes among others:—"The Fisheries Act" (31 Vic., cap. 60, of Canada); "An Act respecting Fishing by Foreign Vessels" (31 Vic., cap. 61, of Canada), and the subsequent Statute entitled: "An Act to amend the Act respecting Fishing by Foreign Vessels," made and passed the 12th May, 1870 (33 Vic., cap. 15, of Canada); also an "Act to further amend the said Act" (34 Vic., cap. 23, of Canada).

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" (of the Coast and Deep Sea Fisheries), amended by the Act entitled "An Act to amend cap. 94 of the Revised Statutes of Nova Scotia" (29 Vic., cap. 35).

An Act passed by the Legislature of the Province of New Brunswick entitled "An Act relating to the Coast Fisheries and for the prevention of Illicit Trade" (16 Vic., cap. 69).

Also an Act passed by the Legislature of Prince Edward Island (6 Vic., cap. 14), entitled "An Act relating to the Fisheries and for the prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbours thereof."

Also from such Regulations as have been passed, or may be passed, by the Governor-General in Council, or from instructions from the Department of Fisheries, under "The Fisheries Act" hereinbefore cited.

As Fishery Officer you have full authority to compel the observance of the requirements of the Fisheries Acts and Regulations by foreign fishing-vessels and fishermen in those parts of the coasts of Canada to which, by the Convention of 1818, they are admitted to privileges of taking or drying and curing fish concurrent with those enjoyed by British fishing-vessels and fishermen.

You will receive instructions from the Customs Department authorising you to act as an officer of the Customs, and in that capacity you are to see that the Revenue Laws and Regulations are duly observed.

Your jurisdiction with respect to any action you may take against foreign fishing-vessels, and citizens engaged in fishing, is to be exercised only within the limits of "3 marine miles" of any of "the coasts, bays, creeks, or harbours" of Canada.

With regard to the Magdalen Islands, although the liberty to land and to dry and cure fish there is not expressly given by the terms of the Convention to United States' fishermen, it is not at present intended to exclude them from these islands.

It will be your duty to protect the inshore fisheries of Canada in accordance with the conditions laid down by the Convention of the 20th October, 1818, the 1st Article of which provides:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from

* For Warning as eventually amended, see p. 87.

Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground."

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and repairing of damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

By this you will observe United States' fishermen are secured the liberty of taking fish on the southern coasts of Labrador, and around the Magdalen Islands, and of drying and curing fish along certain of the southern shores of Labrador, where this coast is unsettled, or if settled, after previous agreement with the settlers or owners of the ground.

In all other parts the exclusion of foreign vessels and boats is absolute, so far as fishing is concerned, and is to be enforced within the limits laid down by the Convention of 1818, they being allowed to enter bays and harbours for four purposes only, viz., *for shelter, the repairing of damages, the purchasing of wood, and to obtain water.*

You are to compel, if necessary, the maintenance of peace and good order by foreign fishermen pursuing their calling and enjoying concurrent privileges of fishing or curing fish with British fishermen in those parts to which they are admitted by the Treaty of 1818.

You are to see that they obey the laws of the country, that they do not molest British fishermen in the pursuit of their calling, and that they observe the Regulations of the Fishery Laws in every respect.

You are to prevent foreign fishing-vessels and boats which enter bays and harbours for the four legal purposes above mentioned from taking advantage thereof to take, dry, or cure fish therein, to purchase bait, ice, or supplies, or to tranship cargoes, or from transacting any business in connection with their fishing operations.

It is not desired that you should put a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation and circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the wish of Her Majesty's Government that the rights of exclusion should not be strained, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen or the property of Canadians appear to be inseparable from the exercise of such indulgence, you will withhold it and insist upon entire exclusion.

United States' fishermen should be made aware that, in addition to being obliged, in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in colonial waters, to obey the laws of the country, and particularly such Acts and Regulations as exist to insure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto, they are peculiarly bound to preserve peace and order in the quasi-settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and the throwing overboard of offals, thus fouling the fishing, feeding, and breeding grounds. "The Fisheries Act" (section 14) provides a heavy penalty for this offence.

Take occasion to inquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the fisheries.

You will accost every foreign fishing-vessel within the limits described, and if that vessel should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, you will, by virtue of the authority conferred upon you by your Commission, and under the provisions of the Acts above recited, seize at once (resort to force in doing so being only justifiable after every other effort has failed), any vessel detected in violating the law, and send her or take her into port for condemnation.

Copies of the Acts of Parliament subjecting to seizure and forfeiture any foreign ship, vessel, or boat which should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, and providing for carrying out the seizure and forfeiture, are furnished herewith for your information and distribution.

Should you have occasion to compel any foreign fishing-vessels or fishermen to conform to the requirements of the "Fisheries Act and Regulations," as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818, particularly in relation to ballast, fish-offals, setting of nets, hauling of seines, and use of "trawls" or "bultows," more especially at and around the Magdalen Islands, your power and authority under such cases will be similar to that of any other fishery officer appointed to enforce the Fishery Laws in Canadian waters (vide *Fisheries Act*).

If a foreign ship, vessel, or boat be found violating the Convention or resisting consequent seizure, and momentarily effects her escape from the vicinity of her capture or elsewhere, she remains always liable to seizure and detention if met by yourself in Canadian waters, and in British waters everywhere, if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed, as soon as possible, in the custody of the nearest Customs Collector, and information, with a statement of the facts, and the depositions of your sailing-master, clerk, lieutenant, or mate, and of two at least of the most reliable of your crew, be dispatched with all possible diligence to the Government. Be careful to describe the exact locality where the violation of the law took place and the ship, vessel, or boat was seized. Also corroborate the bearings taken by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and land-marks as shall place beyond doubt the illegal position of the seized ship, vessel, or boat.

Omit no precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it is possible that foreign fishing craft may be driven into Canadian waters by violent or contrary winds, by strong tides, through misadventure, or some other cause independent of the will of the master and crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing or detaining any vessel.

On capture, it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or, if because of several seizures, the number of your hands might be too much reduced, you will in such emergency endeavour to engage a few trustworthy men. The portion of foreign crew taken on board the Government vessel you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada may be reached, and leave them there.

When any of Her Majesty's vessels about the fishing stations or in port are met with, you should, if circumstances permit, go on board and confer with the Naval Commander, and receive any suggestions he may feel disposed to give which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft; also inform him what vessels you have accosted and where.

Do not fail to make a full entry of all circumstances connected with foreign fishing-vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings as often as possible, and keep the Department fully advised on every opportunity, where instructions would most probably reach you at stated intervals.

Directions as to the stations and limits on which you are to cruise, and any further instructions that may be deemed necessary, will from time to time be conveyed to you.

Considerable inconvenience is caused by Canadian fishing-vessels neglecting to show their colours. You will draw the attention of masters to this fact, and request them to hoist their colours without requiring to be hailed and boarded.

It cannot be too strongly urged upon you, nor can you too earnestly impress upon the officers and crew under your command, that the service in which you and they are engaged should be performed with forbearance and discrimination.

The Government relies on your prudence, discretion, and firmness in the performance of the special duties intrusted to you.

I am, &c.

(Signed)

Minister of Marine and Fisheries.

No. 37.

Sir L. West to the Earl of Rosebery.—(Received April 24.)

My Lord,

Washington, April 11, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a despatch which I addressed to the Marquis of Lansdowne, calling attention to the reported argument of the United States' Consul-General at Halifax in relation to the provisions of the Treaty of 1818, as well as copy of his Excellency's reply thereto, together with copy of the Report of a Committee of the Privy Council of Canada setting forth their views on this point.

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure 1 in No. 37.

Sir L. West to the Marquis of Lansdowne.

My Lord,

Washington, March 29, 1886.

I HAVE the honour to inform your Excellency that the American Consul-General at Halifax is reported to have argued that there is nothing in the Treaty of 1818 to prevent Americans, having caught fish in deep water and cured them, from landing them in marketable condition at any Canadian port and transshipping them in bond to the United States either by rail or vessel, and that, moreover, a refusal to permit the transportation would be a violation of the general bonding arrangement between the two countries.

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure 2 in No. 37.

The Marquis of Lansdowne to Sir L. West.

Sir,

Government House, Ottawa, April 7, 1886.

I CAUSED to be referred to my Government your despatch of the 29th March, in which you informed me that the United States' Consul-General at Halifax was reported to have argued that there was nothing in the Convention of 1818 to prevent American fishermen from landing at any Canadian port, cured and in a marketable condition, fish which had been caught by them outside the territorial waters of this country, and transshipping the same in bond to the United States by rail or otherwise, and that any refusal to permit such transportation would be a violation of the general bonding arrangement existing between the two countries.

2. I have now the honour to forward herewith, for your confidential information, copies of an approved Report of a Committee of the Privy Council, setting forth the

views of my Government upon the point raised by the Consul-General, and of a despatch which I have sent to Earl Granville upon the same subject.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 3 in No. 37.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 6th April, 1886.

THE Committee of the Privy Council have had under consideration a despatch, dated the 29th March, 1886, from Her Majesty's Minister at Washington, informing your Excellency that the United States' Consul-General at Halifax was reported to have argued that there is nothing in the Convention of 1818 to prevent Americans, having caught fish in deep water and cured them from landing them in a marketable condition at any Canadian port and transhipping them in bond to the United States either by rail or vessel, and that any refusal to permit such transhipment would be a violation of the general bonding arrangement between the two countries.

The Sub-Committee to whom the despatch in question was referred report that if the contention of the United States' Consul at Halifax is made in relation to American fishing-vessels, it is inconsistent with the Convention of 1818.

That they are of opinion, from the language of that Convention—"Provided, however, that the American fishermen shall be permitted to enter such bays or harbours for the purposes of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever"—that, under the terms of the Convention, United States' fishermen may properly be precluded from entering any harbour of the Dominion for the purpose of transshipping cargoes, and that it is not material to the question that such fishermen may have been engaged in fishing outside of the "3-mile limit" exclusively, or that the fish which they may desire to have transhipped have been taken outside of such limit.

That to deny the right of transhipment would not be a violation of the general bonding arrangement between the two countries.

That no bonding arrangement has been made which, to any extent, limits the operation of the Convention of 1818, and, inasmuch as the right to have access to the ports of what is now the Dominion of Canada for all other purposes than those named, is explicitly renounced by the Convention, it cannot with propriety be contended that the enforcement of the stipulation above cited is contrary to the general provisions upon which intercourse is conducted between the two countries.

Such exclusion could not, of course, be enforced against United States' vessels not engaged in fishing.

The Sub-Committee in stating this opinion are not unmindful of the fact, that the responsibility of determining what is the true interpretation of a Treaty or Convention made by Her Majesty must remain with Her Majesty's Government, but in view of the necessity of protecting to the fullest extent the inshore fisheries of the Dominion according to the strict terms of the Convention of 1818, and in view of the failure of the United States' Government to accede to any arrangements for the mutual use of the inshore fisheries, the Sub-Committee recommend that the claim which is reported to have been set up by the United States' Consul-General at Halifax be resisted.

The Committee concur in the foregoing Report and recommendation, and they respectfully submit the same for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council for Canada.

No. 38.

Sir L. West to the Earl of Rosebery.—(Received April 26.)

My Lord,

Washington, April 14, 1886.

I HAVE the honour to inclose to your Lordship herewith the report of the debate in the Senate* on the Resolution against the appointment of a Commission

* Inclosures not printed.

for the settlement of the Fisheries question as recommended by the President in his Message to Congress. The Resolution was adopted by a vote of 85 to 10.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 39.

Mr. Bramston to Sir P. Currie.—(Received April 30.)

Sir,

Downing Street, April 30, 1886.

WITH reference to previous correspondence respecting the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a further despatch, with its inclosures, from the Governor-General of Canada on the subject.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 39.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, April 6, 1886.

I HAVE the honour to inclose herewith a copy of an approved Report of a Committee of the Privy Council upon a despatch which I received on the 2nd instant from Her Majesty's Minister at Washington (and of which a copy is herewith inclosed), informing me that the United States' Consul-General at Halifax was reported to have argued that, under the Convention of 1818, it was open to American fishermen to land—cured and in a marketable condition—fish which had been caught outside the 3-mile limit at any Canadian port, and to tranship the same in bond to the United States by rail or vessel, and that any refusal to permit such transshipment would be a violation of the general bonding arrangement between the two countries. It does not appear from Sir Lionel West's despatch that this statement was made officially, or that it has been supported by the Government of the United States. As, however, the matter is one to which further reference may be made, it is desirable that the views of my Government in regard to it should be placed on record.

2. The Report of the Privy Council contains an explanation of the reasons for which it is believed that, under the terms of the Convention, American fishermen are absolutely excluded from a admission to Canadian bays or harbours, except for the purposes of shelter and repairing damages therein, or of purchasing wood and obtaining water. The arrangements in force between the two countries for the transshipment of goods in bond—arrangements which depend in the main upon the Customs Laws of the two countries—cannot, therefore, be regarded as in any sense restricting the operation of the Convention. It should, moreover, be remembered that these bonding arrangements are the same as those which obtained between the two countries after the expiration of the Reciprocity Treaty of 1854, and I am not aware that between that date and the date of the Treaty of 1871 any claims such as those now made by the Consul-General at Halifax were preferred on the part of the United States' Government.

3. Your Lordship will, however, clearly understand that, although it is thought necessary to enforce strictly against American fishing-vessels a restriction which was framed with the express purpose of affording protection to the fisheries of the British Colonies, that restriction would not be applicable to vessels not themselves engaged in fishing, but visiting Canadian ports in the ordinary course of trade.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 39.

Sir L. West to the Marquis of Lansdowne, March 20, 1886.

[See Inclosure 1 in No. 37.]

Inclosure 3 in No. 39.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General in Council on the 6th April, 1886.

[See Inclosure 3 in No. 37.]

No. 40.

Sir L. West to the Earl of Rosebery.—(Received May 24.)

My Lord,

Washington, May 11, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, commenting on the action of the Dominion Government in seizing certain American fishing-vessels under the restrictive provisions of the Treaty of 1818, and inviting a frank expression of the views of Her Majesty's Government upon the subject, believing that, should any difference of opinion or disagreement as to facts exist, they will be found to be so minimized that an accord can be established for the full protection of the inshore fishing of the British provinces, without obstructing the open sea-fishing operations of the citizens of the United States, or disturbing the Trade Regulations now subsisting between the countries.

I have communicated copy of this note to the Marquis of Lansdowne.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 40.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, May 10, 1886.

ON the 6th instant I received from the Consul-General of the United States at Halifax a statement of the seizure of an American schooner, the "Joseph Story," of Gloucester, Mass., by the authorities at Baddeck, Cape Breton, and her discharge, after a detention of twenty-fours.

On Saturday, the 8th instant, I received a telegram from the same official, announcing the seizure of the American schooner "David J. Adams," of Gloucester, Mass., in the Annapolis Basin, Nova Scotia, and that the vessel had been placed in the custody of an officer of the Canadian steamer "Lansdowne," and sent to St. John, New Brunswick, for trial.

As both of these seizures took place in closely land-locked harbours, no invasion of the territorial waters of British provinces with the view of fishing there could well be imagined. And yet the arrests appear to have been based upon the act or intent of fishing within waters as to which, under the provision of the Treaty of 1818 between Great Britain and the United States of America, the liberty of the inhabitants of the United States to fish has been renounced.

It would be superfluous for me to dwell upon the desire which, I am sure, controls those respectively charged with the administration of the Governments of Great Britain and of the United States to prevent occurrences tending to create exasperation and unneighbourly feeling or collision between the inhabitants of the two countries; but, animated with this sentiment, the time seems opportune for me to submit some views for your consideration, which I confidently hope will lead to such administration of the laws regulating the commercial interests and the mercantile marine of the two countries as may promote good feeling and mutual advantage, and prevent hostility to commerce under the guise of protection to inshore fisheries.

The Treaty of 1818 is between two nations, the United States of America and Great Britain, who, as the Contracting Parties, can alone apply authoritative interpretation thereto, or enforce its provisions by appropriate legislation.

The discussion prior to the conclusion of the Treaty of Washington in 1871 was productive of a substantial agreement between the two countries as to the existence and limit of the 3 marine miles within the line of which, upon the regions defined in the Treaty of 1818, it should not be lawful for American fishermen to take, dry, or cure fish. There is no hesitancy upon the part of the Government

of the United States to proclaim such inhibition and warn their citizens against the infraction of the Treaty in that regard, so that such inshore fishing cannot lawfully be enjoyed by an American vessel being within 3 marine miles of the land.

But since the date of the Treaty of 1818 a series of Laws and Regulations importantly affecting the trade between the North American provinces of Great Britain and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants.

This independent and yet concurrent action by the two Governments has effected a gradual extension, from time to time, of the provisions of Article I of the Convention of the 3rd July, 1818, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the results of that Treaty.

President Jackson's Proclamation of the 5th October, 1830, created a reciprocal commercial intercourse, on terms of perfect equality of flag, between this country and the British American dependencies, by repealing the Navigation Acts of the 18th April, 1818, 15th May, 1820, and 1st March, 1823, and admitting British vessels and their cargoes "to an entry in the ports of the United States, from the islands, provinces, and Colonies of Great Britain on or near the American continent, and north or east of the United States." These commercial privileges have since received a large extension in the interests of propinquity, and in some cases favours have been granted by the United States without equivalent concession. Of the latter class is the exemption granted by the Shipping Act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from the British North American and West Indian possessions entering ports of the United States; of the reciprocal class are the arrangements for transit of goods, and the remission by Proclamation, as to certain British ports and places, of the remainder of the tonnage tax, on evidence of equal treatment being shown to our vessels.

On the other side, British and colonial legislation, as notably in the case of the Imperial Shipping and Navigation Act of the 26th June, 1849, has contributed its share toward building up an intimate intercourse and beneficial traffic between the two countries, founded on mutual interest and convenience. These arrangements, so far as the United States are concerned, depend upon municipal statute and upon the discretionary powers of the Executive thereunder.

The seizure of the vessels I have mentioned, and certain published "warnings" purporting to have been issued by the Colonial authorities, would appear to have been made under a supposed delegation of jurisdiction by the Imperial Government of Great Britain, and to be intended to include authority to interpret and enforce the provisions of the Treaty of 1818, to which, as I have remarked, the United States and Great Britain are the Contracting Parties, who can alone deal responsibly with questions arising thereunder.

The effect of this colonial legislation and executive interpretation, if executed according to the letter, would be not only to expand the restrictions and renunciations of the Treaty of 1818, which related solely to inshore fishing within the 3-mile limit, so as to affect the deep-sea fisheries, the right to which remained unquestioned and unimpaired for the enjoyment of the citizens of the United States, but further to diminish and practically destroy the privileges expressly secured to American fishing-vessels to visit those inshore waters for the objects of shelter, repair of damages, and purchasing wood and obtaining water.

Since 1818 certain important changes have taken place in fishing in the regions in question, which have materially modified the conditions under which the business of inshore fishing is conducted, and which must have great weight in any present administration of the Treaty.

Drying and curing fish, for which a use of the adjacent shores was at one time requisite, is now no longer followed, and modern invention of processes of artificial freezing, and the employment of vessels of a larger size, permit the catch and direct transportation of fish to the markets of the United States without recourse to the shores contiguous to the fishing-grounds.

The mode of taking fish inshore has also been wholly changed, and from the highest authority on such subjects I learn that bait is no longer needed for such fishing, that purse-seizes have been substituted for the other methods of taking mackerel, and that by their employment these fish are now readily caught in deeper waters entirely exterior to the 3-mile line.

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As it is admitted that the deep-sea fishing was not under consideration in the negotiation of the Treaty of 1818, nor was affected by thereby, and as the use of bait for inshore fishing has passed wholly into disuse, the reasons which may have formerly existed for refusing to permit American fishermen to catch or procure bait within the line of a marine league from the shore, lest they should also use it in the same prohibited waters for the purpose of catching other fish, no longer exist.

For it will, I believe, be conceded as a fact that bait is no longer needed to catch herring or mackerel, which are the objects of inshore fishing, but is used, and only used, in deep-sea fishing, and, therefore, to prevent the purchase of bait or any other supply needed in deep-sea fishing, under colour of executing the provisions of the Treaty of 1818, would be to expand that Convention to objects wholly beyond its purview, scope, and intent, and give to it an effect never contemplated by either Party, and accompanied by results unjust and injurious to the citizens of the United States.

As, therefore, there is no longer any inducement for American fishermen to "dry and cure" fish on the interdicted coasts of the Canadian provinces, and bait is no longer used or needed by them (for the prosecution of inshore fishing) in order to "take" fish in the inshore waters to which the Treaty of 1818 alone relates, I ask you to consider the results of excluding American vessels, duly possessed of permits from their own Government to touch and trade at Canadian ports as well as to engage in deep-sea fishing, from exercising freely the same customary and reasonable rights and privileges of trade in the ports of the British Colonies as are freely allowed to British vessels in all the ports of the United States under the Laws and Regulations to which I have adverted. Among these customary rights and privileges may be enumerated the purchase of ship-supplies of every nature, making repairs, the shipment of crews in whole or part, and the purchase of ice and bait for use in deep-sea fishing.

Concurrently, these usual rational and convenient privileges are freely extended to, and are fully enjoyed by, the Canadian merchant marine of all occupations, including fishermen, in the ports of the United States.

The question, therefore, arises whether such a construction is admissible as would convert the Treaty of 1818 from being an instrumentality for the protection of the inshore fisheries along the described parts of the British American coast into a pretext or means of obstructing the business of deep-sea fishing by citizens of the United States, and of interrupting and destroying the commercial intercourse that, since the Treaty of 1818, and independent of any Treaty whatever, has grown up, and now exists, under the concurrent and friendly Laws and mercantile Regulations of the respective countries.

I may recall to your attention the fact that a proposition to exclude the vessels of the United States engaged in fishing from carrying also merchandize was made by the British negotiators of the Treaty of 1818, but, being resisted by the American negotiators, was abandoned. This fact would seem clearly to indicate that the business of fishing did not then and does not now disqualify a vessel from also trading in the regular ports of entry.

I have been led to offer these considerations by the recent seizures of American vessels to which I have adverted, and by indications of a local spirit of interpretation in the provinces, affecting friendly intercourse, which is, I firmly believe, not warranted by the terms of the stipulations on which it professes to rest. It is not my purpose to prejudge the facts of the cases, nor have I any desire to shield any American vessel from the consequences of violation of international obligation. The views I advanced may prove not to be applicable in every feature to these particular cases, and I should be glad if no case whatever were to arise calling in question the good understanding of the two countries in this regard, in order to be free from the grave apprehensions which otherwise I am unable to dismiss.

It would be most unfortunate, and, I cannot refrain from saying, most unworthy, if the two nations who contracted the Treaty of 1818 should permit any questions of mutual right and duty under that Convention to become obscured by partizan advocacy or distorted by the heat of local interests. It cannot but be the common aim to conduct all discussion in this regard with dignity and in a self-respecting spirit, that will show itself intent upon securing equal justice rather than unequal advantage.

Comity, courtesy, and justice cannot, I am sure, fail to be the ruling motives and objects of discussion.

I shall be most happy to come to a distinct and friendly understanding with

you as the Representative of Her Britannic Majesty's Government, which will result in such a definition of the rights of American fishing-vessels under the Treaty of 1818 as shall effectually prevent any encroachments by them upon the territorial waters of the British provinces for the purpose of fishing within those waters, or trespassing in any way upon the littoral or marine rights of the inhabitants, and, at the same time, prevent that Convention from being improperly expanded into an instrument of discord by affecting interests and accomplishing results wholly outside of and contrary to its object and intent, by allowing it to become an agency to interfere with and perhaps destroy those reciprocal commercial privileges and facilities between neighbouring communities which contribute so importantly to their peace and happiness.

It is obviously essential that the administration of the Laws regulating the Canadian inshore fishing should not be conducted in a punitive and hostile spirit, which can only tend to induce acts of a retaliatory nature.

Everything will be done by the United States to cause their citizens engaged in fishing to conform to the obligations of the Treaty, and prevent an infraction of the Fishing Laws of the British provinces; but it is equally necessary that ordinary commercial intercourse should not be interrupted by harsh measures and unfriendly administration.

I have the honour, therefore, to invite a frank expression of your views upon the subject, believing that should any differences of opinion or disagreement as to facts exist, they will be found to be so minimized that an accord can be established for the full protection of the inshore fishing of the British provinces, without obstructing the open-sea fishing operations of the citizens of the United States, or disturbing the Trade Regulations now subsisting between the countries.

I have, &c.
(Signed) T. F. BAYARD.

No. 41.

Sir L. West to the Earl of Rosebery.—(Received May 24.)

My Lord,

Washington, May 11, 1886.

I HAVE the honour to report to your Lordship that the seizure of an American fishing-vessel by the Canadian authorities for purchasing bait in Canadian waters has called forth Resolutions in the House of Representatives, a Bill in the Senate, and a Bill in the House, copies of which are herewith inclosed.

I have, &c.
(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 41.

Extracts from the "Congressional Record."

The "David J. Adams."

Mr. Dawes submitted the following Resolution, which was considered by unanimous consent, and agreed to:—

"Resolved,—That the President be requested to communicate to the Senate, if in his opinion not incompatible with the public interest, any information in the possession of the Government concerning the alleged seizure of the United States' fishing-vessel 'David J. Adams,' while engaged in lawful commerce in one of the ports in the Dominion of Canada, and what measures, if any, have been taken to protect fishing-vessels of the United States while engaged in lawful commerce in the ports of the Dominion of Canada."

Mr. Dawes submitted the following Resolution, which was considered by unanimous consent, and agreed to:—

"Resolved,—That the Committee on Foreign Relations be instructed to inquire whether the United States' fishing-vessel 'David J. Adams' has been seized while engaged in lawful commerce in a port of the Dominion of Canada, and what measures,

if any, are necessary to protect the persons and property of American citizens while engaged in lawful commerce in the ports of the Dominion of Canada; and to report by Bill or otherwise."

Seizure of the Vessel "David J. Adams."

Mr. Stone, of Massachusetts, offered the following Resolution, which was read, and referred to the Committee on Foreign Affairs:—

"Whereas it is reported that an American fishing-vessel, namely, the 'David J. Adams,' of Gloucester, Massachusetts, has recently been seized in Digby, Nova Scotia, for the alleged purchase of bait, by the British flag-ship 'Lansdowne,' in apparent violation of the commercial rights conceded to American vessels by the British Government:

"Ordered,—That the Committee on Foreign Affairs be instructed to inquire into the facts of the case, with authority to recommend such legislation as may be due to a proper sense of national dignity and to a just regard for the rights and interests of the national commerce."

Seizure of the "David J. Adams."

Mr. Breckinridge, of Arkansas, offered the following Resolution, which was read, and referred to the Committee on Foreign Affairs:—

"Whereas it is reported in the public prints that on the 7th May, at Digby, in the Dominion of Canada, the schooner 'David J. Adams,' owned by American citizens, was forcibly seized by the steamer 'Lansdowne,' under order of the Government of said Dominion, and is now held for further proceedings: Therefore,

"Be it resolved,—That the President of the United States be requested to inform this House, if not deemed by him incompatible with the good of the public service, what steps have been taken by him to have said seizure investigated, and to communicate to this House at the earliest practicable day what were the circumstances and the pretence under which said seizure was made."

Inclosure 2 in No. 41.

49th Congress, 1st Session.—H. Res. 168.

IN THE HOUSE OF REPRESENTATIVES.

May 10, 1886.—Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

Mr. Rice introduced the following Joint Resolution:—

Joint Resolution for the Protection of American Fishermen.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the recent seizure of the United States' fishing-schooner "Adams" by the Canadian Government, on the charge of purchasing fishing-bait in a Nova Scotia port, was a violation of the reciprocal commercial rights of citizens of the United States and of Great Britain, growing out of the principles of international comity recognized by the legislation of both countries, and demands of this Government prompt and efficient measures to obtain reparation to its citizens for this unlawful act, and to protect them against its repetition.

Inclosure 3 in No. 41.

40th Congress, 1st Session.—S. 2302.

IN THE SENATE OF THE UNITED STATES.

May 10, 1886.

Mr. Frye introduced the following Bill, which was read twice and referred to the Committee on Commerce:—

A Bill to Limit the Commercial Privileges of Vessels of Foreign Countries in the Ports of the United States to such Purposes as are accorded to American Vessels in the Ports of such Foreign Countries.

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, it shall be the duty of the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, to issue his Proclamation excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign countries, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending the concessions previously granted to the vessels of such country; and on and after the date named in such Proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said Proclamation from the exercise of any commercial privileges shall do any act prohibited by said Proclamation in the ports, harbours, or waters of the United States, for or on account of such vessel, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this act, or aiding and abetting any other person in such opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

Inclosure 4 in No. 41.

40th Congress, 1st Session.—H. R. 8630.

IN THE HOUSE OF REPRESENTATIVES.

May 10, 1886.—Read twice, referred to the Select Committee on American Ship-Building and Ship-Ownning Interests, and ordered to be printed.

Mr. Dingley introduced the following Bill:—

A Bill to limit the Commercial Privileges of Vessels of Foreign Countries in the Ports of the United States to such Purposes as are accorded to American Vessels in the Ports of such Foreign Countries.

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, it shall be the duty of the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, to issue his Proclamation excluding, on and after such time as he may indicate, all vessels of such foreign country of a similar character to the vessels of

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the United States thus discriminated against from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, and suspending the concessions previously granted to the vessels of such foreign country to the extent herein provided; and on and after the date named in such Proclamation for it to take effect, if the master, or officer, or agent of any vessel of such foreign country excluded by said Proclamation from the exercise of any commercial privileges shall do any act prohibited by said Proclamation, in the ports, harbours, or waters of the United States, for and on account of said vessel, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and every person opposing any officer of the United States in the enforcement of this Act, or aiding or abetting any other person in any opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

No. 42.

Sir L. West to the Earl of Rosebery.—(Received May 24.)

My Lord,

Washington, May 11, 1886.

WITH reference to my preceding despatch, I have the honour to inclose copy of a private letter, together with copy of the inclosure which accompanied it, which I have received from Mr. Bayard, and in consequence of which I telegraphed to the Marquis of Lansdowne in the following words:—

"Secretary of State deprecates conduct of Captain Scott in refusing to give reasons for seizure of 'Adams.'"

I inclose to your Lordship copy of my reply to Mr. Bayard's communication.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 42.

Mr. Bayard to Sir L. West.

My dear Sir Lionel,

Washington, May 11, 1886.

I INCLOSE a copy of a telegram just received from the United States' Consul-General at Halifax, who, in accordance with my instructions, is giving careful attention to the case of the American schooner "David J. Adams," seized by the Canadian steamer "Lansdowne" in Digby Basin some days ago.

The reported conduct of Captain Scott, of the "Lansdowne," in declining to give any reason for his seizure of the "Adams," is much to be deprecated, and it is due to the cause of law and order, which I am sure we both desire to serve, that no act of even doubtful authority should be exercised by the Provincial Authorities, and that, in the execution of undoubted powers, a calm and moderate vindication of the law should characterize all proceedings of an adversary character against Americans and their property. A harsh, uncivil administration of law adds nothing to its just force, but only furnishes cause for retaliatory action, and creates new difficulties in the settlement of international questions.

Indiscreet action on the part of the Canadian authorities should certainly be prevented in the interest of amicable relations.

Yours, &c.

(Signed) T. S. BAYARD.

Inclosure 2 in No. 42.

Mr. Phelan to Mr. Bayard.

(Telegraphic.)

Digby, United States, May 11, 1886.

"DAVID J. ADAMS" delivered to Collector yesterday. This morning Captain Scott took possession of her again. I addressed him a note, asking why he detained the vessel. He replied by referring me to Ottawa. I will take the deposition of the captain and crew of the "Adams" as soon as they arrive.

Inclosure 8 in No. 42.

Sir L. West to Mr. Bayard.

Dear Mr. Bayard,

Washington, May 12, 1886.

I IMMEDIATELY telegraphed the substance of the telegram, copy of which was inclosed in your private letter of yesterday, respecting the seizure of the "Adams," to Lord Lansdowne, and wrote to him the same evening.

You may rest assured that whatever it is in my power to do to bring about a satisfactory understanding on the question at issue, as well as on all others that may arise in connection therewith, will be done, and that it is my earnest desire to carry out the instructions which I shall doubtless receive from my Government in this sense.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 43.

Sir L. West to the Earl of Rosebery.—(Received May 24.)

My Lord,

Washington, May 12, 1886.

I HAVE the honour to inclose to your Lordship herewith a Memorandum embodying the views expressed in letters addressed to the press by Representatives and others of the position of the United States' Government with regard to the Treaty of 1818.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 45.

Memorandum respecting the Contention of the American Fishing Interest.

THE United States' Government has always claimed that the proper construction of the Treaty of 1818 made the 3-mile limit follow the coast-line, and did not allow the line to be drawn from headland to headland, and thus exclude American fishermen from waters of arms of the ocean more than 3 miles from land. But this is not the question at issue. It is commercial rights which are now in dispute, and it is contended that under existing commercial relations between the two countries (Great Britain and the United States), United States' fishing-vessels have the same right to enter Canadian ports and purchase bait to be used in the open sea-fishing as Canadian vessels to enter United States' ports for the same purpose.

It is important that the commercial rights of American fishing-vessels in Canadian ports should be settled, that is to say, whether they are to be determined by the restrictive principles of maritime intercourse which prevailed in 1818, or by the principles of maritime reciprocity inaugurated by the United States in 1824, and finally accepted by Great Britain in 1850.

No. 44.

Sir L. West to the Earl of Rosebery.—(Received May 24.)

My Lord,

Washington, May 13, 1886.

WITH reference to my despatch of the 11th instant, I have the honour to inclose to your Lordship herewith copy of a private note which I have received from the Secretary of State in reply to mine of the 12th, together with copy of a further telegram from the United States' Consul-General at Halifax, the substance of which I also communicated to the Marquis of Lansdowne, who has replied in the following terms:—"Adams" will be proceeded against for violation of Customs Act of 1883, of Dominion Fishery Act of 1868, and of Convention of 1818. Captain Scott has been

instructed to state reasons of seizure [in?] all cases," and the substance of which I have communicated to Mr. Bayard.

I have, &c.
(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 44.

Mr. Bayard to Sir L. West.

Dear Sir Lionel,

Washington, May 12, 1886.

THE tenour of your note of to-day is quite in accord with my expectations, and I cannot doubt that you will secure more circumspect and amicable action upon the part of the Canadian officials in relation to interference with American vessels not infracting Treaty stipulations against inshore fishing.

I inclose a copy of a telegram just received from the United States' Consul-General at Halifax, which I think you ought to see, because it indicates very loose methods in dealing with matters of grave importance.

Yours, &c.
(Signed) T. F. BAYARD.

Inclosure 2 in No. 44.

Mr. Phelan to Mr. Bayard.

(Telegraphic.)

Digby, United States, May 11, 1886.

THE charge against the "Adams" for violating the Customs was so trifling, that it seems they have abandoned it, and gone back to the charge of violating the fishery laws. The officers don't seem to know what to do. The "Adams" is here. The "Lansdowne" is here yet. Captain Scott refuses to state why the "Adams" was seized, or why she is held. This information is necessary to an intelligent defence, and I cannot understand why it is refused.

No. 45.

*The Earl of Rosebery to Sir L. West.**

Sir,

Foreign Office, May 24, 1886.

THE American Minister called on me to-day, and said that he had received a telegram from Mr. Bayard late on Saturday night instructing him to ask me if the seizure of American fishing-vessels in Canadian waters could not be discontinued, and the vessels already captured restored, of course, without prejudice, and on an undertaking to surrender them if required.

Mr. Phelps went on to argue the construction of the Treaty of 1818, and said that though, at a first glance, its provisions might seem to justify the Canadian authorities in the course which they had taken, a general view of its whole scope contradicted that assumption, which, in any case, was inconsistent with the cordial relations existing between the two countries. In reply, I reminded Mr. Phelps that that Treaty was concluded at a time when, after a war and a period of great bitterness, the relations between Great Britain and the United States were not so cordial as they are now.

As regarded the construction of the Treaty, I could not presume to argue with so eminent a lawyer as himself. I could not, however, refrain from expressing the opinion that the plain English of the clause seemed to me entirely to support the Canadian view. Nor was it the fault of the Canadians that they had been compelled to resort to the enforcement of the Treaty. I admitted, indeed, that the responsibility did not lie on the American Government. But the Senate had refused to sanction any negotiation on the matter, and had therefore thrown back the Canadians on the provisions of the Treaty of 1818. As regarded the seizure of the vessels which Mr. Phelps had described as having transgressed unwittingly, I could only say but

* Copy to Colonial Office, May 28.

little, as I had received no intelligence beyond what was stated in the newspapers. If, however, they had erred unwittingly, it was not our fault, for we had issued a formal warning to American fishermen that they would not be permitted, under the Treaty of 1818, to do certain things, and we had requested Mr. Bayard to issue a similar notice. He, however, had declined to do so. I could not, therefore, think that the American vessels had erred unwittingly, more especially as, if I was rightly informed by the newspapers, there were suspicious and furtive circumstances connected with the case of the "David Adams," at any rate, which tended to prove that the captain was aware that he was acting illegally.

As to the substantial proposition of Mr. Bayard, I begged Mr. Phelps to return the following answer: No one, as he was aware, could be more anxious than I was to maintain the most cordial relations between the two countries. He well knew that I would go more than half-way to meet Mr. Bayard in this matter, but it would be difficult to ask the Canadians to suspend their legal action if we had nothing to offer them in the way of a *quid pro quo*. What I would suggest would be this, that he should telegraph at once to Washington to tell Mr. Bayard that I would do my best to induce the Colonial authorities to suspend their action if some assurance could be given me of an immediate readiness to negotiate on the question. Mr. Phelps promised to do this.

I am, &c.
(Signed) ROSEBERY.

No. 46.

Sir J. Pauncefote to Sir R. Herbert.

Sir,

Foreign Office, May 26, 1886.

I AM directed by the Earl of Rosebery to transmit to you a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a note from Mr. Bayard, which contains representations respecting the seizure of United States' fishing-vessels by Canadian authorities.*

His Lordship would propose, with Lord Granville's concurrence, to defer making a reply to this communication until the views of the Canadian Government thereon have been received; and as it appears from Sir L. West's despatch that a copy has already been forwarded from Washington to the Governor-General, I am to suggest that his Excellency should be requested, by telegram, to send home, with the least possible delay, any observations which the Dominion Government wish to make on the subject.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

No. 47.

Mr. Bayard to Mr. Phelps.—(Communicated to the Earl of Rosebery by Mr. Phelps, May 29.)

(Telegraphic.)

May 27, 1886.

YOU will say to Lord Rosebery that every disposition exists on our part to arrive at an amicable and just solution of Canadian fishery and trade question as the President has already manifested. Main point now is to have Treaty of 1818 so interpreted as not to destroy commercial intercourse, including purchase of bait for use in deep-sea fishing. This was done by Great Britain in 1871, and its abandonment now would be inadmissible† and adhered to now would relieve hardship and exasperation caused by summary arrest of vessels. Present action of Canadian authorities is calculated to obstruct settlement.

* No. 40.

† This word is doubtful as to correct reading of cypher.

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The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, May 20, 1886.

THE American Minister called on me to-day and read me a telegram from Mr. Bayard, of which I inclose a copy.*

He again discussed at some length the provisions of the Treaty of 1818, and said that the newspapers which had reached him from America treated the matter as of little moment, because the British Government were sure not to support the action of the Canadian Administration. He also alluded to a correspondence with Lord Kimberley in 1871, in which Lord Kimberley stated that the Imperial Government was the sole interpreter of the British view of Imperial Treaties, and that they were not able to support the Canadian view of the Bait Clause. Mr. Phelps finally urged that the action of the Canadian Government should be suspended, which would then conduce to a friendly state of matters, which might enable negotiations to be resumed.

I replied to Mr. Phelps that, as regards the strict interpretation of the Treaty of 1818, I was in the unfortunate position that there were not two opinions in this country on the matter, and that the Canadian view was held by all authorities to be legally correct. If we are now under the provisions of the Treaty of 1818 it was by the action, not of Her Majesty's Government, or of the Canadian Government, but by the wish of the United States. I had offered to endeavour to procure the prolongation of the temporary arrangement of last year, in order to allow an opportunity for negotiating, and that had been refused. A Joint Commission had been refused, and, in fact, any arrangement, either temporary or permanent, had been rejected by the United States; it was not a matter of option but a matter of course that we returned to the existing Treaty. As to Lord Kimberley's view, I had had no explanation from him on that point, and, of course, I entirely concurred with his opinion that the British Government were the interpreters of the British view of Imperial Treaties. As regarded the wish expressed by Mr. Phelps that the present action should be suspended, when possibly an opportunity might arrive for negotiation, I said that that amounted to an absolute concession of the Canadian position with no return whatever, and I feared that the refusal of the United States to negotiate, for so I could not help interpreting Mr. Bayard's silence in answer to my proposition, would produce a bad effect, and certainly would not assist the Imperial Government in their efforts to deal with this question. In the meantime, however, I begged him simply to assure Mr. Bayard that I had received his communication, and that we were still awaiting the Canadian Case and the details of the other seizures; that when we had received these, for which we had telegraphed, I hoped to be in a better position for giving an answer. Mr. Phelps also touched on the seizures of these ships, and I said that the legality of that would be decided in a Court of Law, and Mr. Phelps objected that it would be a Dominion Court of Law and not an Imperial Court. I replied that an appeal would lie to the Courts in this country, and Mr. Phelps pointed out that that procedure would be expensive; but I reminded him again that it was not our fault that we had been thrown on the provisions of the Treaty of 1818.

I am, &c.

(Signed) ROSEBERY.

Sir L. West to the Earl of Rosebery.—(Received May 31.)

My Lord,

Washington, May 21, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a further note which I have received from the Secretary of State, which, after commenting upon the action of the Canadian authorities in the seizure of the American schooner "David J. Adams," concludes by requesting that orders may be issued under the authority of Her Majesty's Government that no vessel be seized unless the offence of fishing within the 8-mile limit is proved in conformity with the instructions issued by the British Government in 1870.

Your Lordship will understand that I am unable, in the absence of instructions, to reply to either of the notes of the Secretary of State. I have communicated copy of the above-mentioned note to the Marquis of Lansdowne.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 49.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, May 20, 1886.

ALTHOUGH without reply to the note I had the honour to address to you on the 10th instant in relation to the Canadian fisheries, and the interpretation of the Treaty of 1818, between the United States and Great Britain, as to the rights and duties of the American citizens engaged in maritime trade and intercourse with the provinces of British North America, in view of the unrestrained and, as it appears to me, unwarranted, irregular, and severe action of Canadian officials towards American vessels in those waters, yet I feel it to be my duty to bring impressively to your attention information more recently received by me from the United States' Consul-General at Halifax, Nova Scotia, in relation to the seizure and continued detention of the American schooner "David J. Adams," already referred to in my previous note, and the apparent disposition of the local officials to use the most extreme and technical reasons for interference with vessels not engaged in, or intended for, inshore fishing on that coast.

The Report received by me yesterday evening alleges such action in relation to the vessel mentioned as renders it difficult to imagine it to be that orderly proceeding and "due process of law" so well known and customarily exercised in Great Britain and the United States, and which dignifies the two Governments, and gives to private rights of property and the liberty of the individual their essential safeguards.

By the information thus derived it would appear that after four several and distinct visitations by boats' crews from the "Lansdowne" in Annapolis Basin, Nova Scotia, the "David J. Adams" was summarily taken into custody by the Canadian steamer "Lansdowne," and carried out of the Province of Nova Scotia across the Bay of Fundy and into the port of St. John, New Brunswick, and without explanation or hearing, on the following Monday, the 10th May, taken back again by an armed crew to Digby, in Nova Scotia. That in Digby the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such manner as to prevent its contents being read, and the request of the captain of the "David J. Adams" and of the United States' Consul-General to be allowed to detach the writ from the mast for the purpose of learning its contents was positively refused by the Provincial official in charge; nor was the United States' Consul-General able to learn from the Commander of the "Lansdowne" the nature of the complaint against the vessel, and his respectful application to that effect was fruitless.

In so extraordinarily confused and irresponsible condition of affairs, it is not possible to ascertain with that accuracy which is needful in matters of such grave importance the precise grounds for this harsh and peremptory arrest and detention of a vessel the property of citizens of a nation with whom relations of peace and amity were supposed to exist.

From the best information, however, which the United States' Consul-General was enabled to obtain after application to the prosecuting officials, he reports that the "David J. Adams" was seized and is now held—

1. For alleged violation of the Treaty of 1818;
2. For alleged violation of the Act 59 Geo. III;
3. For alleged violation of the Colonial Act of Nova Scotia of 1868; and
4. For alleged violation of the Act of 1870 and also of 1883, both Canadian Statutes.

Of these allegations, there is but one which at present I press upon your immediate consideration, and that is the alleged infraction of the Treaty of 1818.

I beg to recall to your attention the correspondence and action of those respectively charged with the administration and government of Great Britain and the United States in the year 1870, when the same international questions were under

consideration and the status of law was not essentially different from what it is at present.

The correspondence discloses the intention of the Canadian authorities of that day to prevent encroachment upon their inshore fishing-grounds, and their preparations in the way of a marine police force, very much as we now witness. The Statutes of Great Britain and of her Canadian provinces, which are now supposed to be invoked as authority for the action against the schooner "David J. Adams," were then reported as the basis of their proceedings.

In his note of the 26th May, 1870, Mr., afterwards Sir Edward, Thornton, the British Minister at this capital, conveyed to Mr. Fish, the Secretary of State, copies of the orders of the Royal Admiralty to Vice-Admiral Wellesley, in command of the naval forces "employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada."

All of these orders directed the protection of Canadian fishermen and cordial co-operation and concert with the United States' force sent on the same service with respect to American fishermen in those waters. Great caution in the arrest of American vessels charged with violation of the Canadian Fishing Laws was scrupulously enjoined by the British authorities, and extreme importance of the commanding officers of ships selected to protect the fisheries exercising the utmost discretion in paying especial attention to Lord Granville's observation that no vessel should be seized unless it were evident, and could be clearly proved, that the offence of fishing had been committed, and the vessel captured, within 3 miles of land.

This caution was still more explicitly announced when Mr. Thornton, on the 11th June, 1870, wrote to Mr. Fish:—

"You are, however, quite right in not doubting that Admiral Wellesley, on receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command so that they may be in conformity with the views of the Admiralty.

"In confirmation of this I have since received a letter from Vice-Admiral Wellesley, dated the 30th ultimo, informing me that he had received instructions to the effect that officers of Her Majesty's ships employed in the protection of the fisheries should not seize any vessel unless it were evident, and could be clearly proved, that the offence of fishing had been committed, and the vessel itself captured, within 3 miles of land."

This understanding between the two Governments wisely and efficiently guarded against the manifest danger of intrusting the execution of powers so important, and involving so high and delicate a discretion, to any but wise and responsible officials, whose prudence and care should be commensurate with the magnitude and national importance of the interest involved, and I should fail in my duty if I do not endeavour to impress you with my sense of the absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the Treaty of 1818 to the conditions announced by Sir Edward Thornton to his Government in June 1870.

The charges of violating the local Laws and Commercial Regulations of the ports of the British provinces (to which I am desirous that due and full observance should be paid by citizens of the United States) I do not consider in this note; and I will only take this occasion to ask you to give me full information of the official action of the Canadian authorities in this regard, and what Laws and Regulations, having the force of law, in relation to the protection of their inshore fisheries and preventing encroachments thereon, are now held by them to be in force. But I trust that you will join with me in realizing the urgent and essential importance of restricting all arrests of American fishing-vessels for supposed or alleged violations of the Convention of 1818 within the limitations and conditions laid down by the authorities of Great Britain in 1870, to wit: that no vessel shall be seized unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself captured, within 3 miles of land.

In regard to the necessity for the instant imposition of such restrictions upon the arrest of vessels, you will, I believe, agree with me, and I will therefore ask you to procure such steps to be taken as shall cause such orders to be forthwith put in force under the authority of Her Majesty's Government.

I have, &c.
(Signed) T. F. BAYARD.

No. 50.

Sir L. West to the Earl of Rosebery.—(Received May 31.)

My Lord,

Washington, May 21, 1886.

WITH reference to my preceding despatch, I have the honour to inclose to your Lordship herewith copy of a private note which I have received from Mr. Bayard, which I have referred to the Marquis of Lansdowne.

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure in No. 50.

Mr. Bayard to Sir L. West.

My dear Mr. West,

Washington, May 20, 1886.

SINCE writing you my last note of to-day's date my attention has been called to a statement that the American schooner "Jennie and Julia," of Eastport, Maine, having cleared from that port for Digby, Nova Scotia, made due entry at the latter port, and upon attempting to purchase a lot of herring for smoking, was warned that the vessel would be seized if herring were purchased for any purpose whatever, whereupon the vessel left without taking in cargo.

If, as it is to be inferred from the fact of the regular clearance and entry, the "Jennie and Julia" was documented for a trading voyage, the reported action of the Digby Collector should be looked into very sharply.

It would certainly not help an amicable adjustment of the present difficulties if the Provincial authorities were to initiate a policy of commercial non-intercourse, by refusing to permit exportation of fish in American bottoms.

The report is attracting much attention, and I have telegraphed to our Consular Agent at Digby for a statement of the facts.

I should be glad to receive from you any information you may have in relation to the Collector's action.

Very, &c.

(Signed)

T. F. BAYARD.

No. 51.

Sir L. West to the Earl of Rosebery.—(Received May 31.)

My Lord,

Washington, May 21, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a despatch which I have received from the Marquis of Lansdowne in connection with the note of the Secretary of State of the 10th instant. I have taken occasion to communicate this despatch to Mr. Bayard, who expressed great satisfaction at its contents.

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure in No. 51.

The Marquis of Lansdowne to Sir L. West.

Sir,

Government House, Ottawa, May 17, 1886.

I HAD the honour of receiving your letter of the 12th instant, inclosing a copy of Mr. Bayard's note of the 10th upon the questions raised by the recent detention of the United States' schooner "David J. Adams" at Digby, Nova Scotia, for alleged violation of the Customs and Fishing Laws.

You have, I understand, been good enough to supply me with a copy of that letter in order that the Dominion Government may, without loss of time, be placed in possession of the views of that of the United States in regard to these questions, and not with the object of eliciting from me at present any comments upon the arguments advanced by Mr. Bayard.

I am, however, glad to take the earliest opportunity of expressing the pleasure with which the Government of the Dominion has observed the temper in which Mr. Bayard has discussed the matter referred to, and its entire concurrence with him in desiring to import into that discussion nothing that could affect the friendly relations of the two countries.

I have, &c.
(Signed) LANSDOWNE.

No. 52.

Mr. Phelps to the Earl of Rosebery.—(Received June 1.)

My Lord,

Legation of the United States, London, June 1, 1886.

I HAVE the honour to inclose, for your perusal, a copy of the translation of a cypher telegram which I have just received from the Secretary of State of the United States, and respectfully to ask your early attention to the subject it refers to.

I shall have the honour to submit to your Lordship in writing, in behalf of my Government, within two or three days, some observations on the questions involved.

I have, &c.
(Signed) E. J. PHELPS.

Inclosure in No. 52.

Mr. Bayard to Mr. Phelps.

(Telegraphic.)

May 30, 1886.

CALL attention of Lord Rosebery immediately to Bill No. 186 now pending in the Parliament of Canada, assuming to execute Treaty of 1818; also Circular No. 371, by Johnson, Commissioner of Customs, ordering seizure of vessels for violation of Treaty.* Both are arbitrary and unwarranted assumptions of power against which you are instructed earnestly to protest, and state that the United States will hold Government of Great Britain responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within territorial waters of British North America.

No. 53.

The Earl of Rosebery to Sir L. West.†

Sir,

Foreign Office, June 1, 1886.

I HAVE received your despatch of the 11th ultimo on the subject of the North American fisheries, and I have to acquaint you, in reply, that Her Majesty's Government have no objection to a friendly interchange of personal views between yourself and Mr. Bayard upon this question, on the understanding that any communications which may so take place are without prejudice and *ad referendum*. Her Majesty's Government, not having yet received the full statement of the views of the Canadian Government in the matter, are not at present in a position to furnish you with definite instructions.

I have to add that on the 24th ultimo I made a proposal of negotiations to the United States' Minister at this Court, to which, however, I have not yet received any reply.

I am, &c.
(Signed) ROSEBERY.

* For text of Bill, see p. 157. For text of Circular as eventually amended, see p. 86.

† Copy to Colonial Office, June 2.

The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, June 2, 1886.

THE American Minister informed me to-day, in the course of conversation, that he was at this moment preparing a Statement of the American contention with regard to the recent seizures under the terms of the Convention of 1818. He entered into a long argument to show that seizure was not provided for by law as a penalty for the infraction of this clause; that what was provided for was a punishment for American vessels fishing within the forbidden limits. He said that his Government could not admit the interpretation which apparently was accepted by the Canadian Government, and he mentioned the fact that in any case the American fishermen had no notice of the action that was going to be taken. As to the latter point, I replied that that was not the fault of Her Majesty's Government. On the 18th March I had telegraphed to you to ask you to request the Secretary of State to issue a Notice such as we were about to issue to Canadian fishermen, and he had declined to do so. Mr. Phelps was not aware of this. I went on to say that the view of the American Government appeared to be this: "You are to accept our interpretation of the Treaty, whether it be yours or not, and in any case we will not negotiate with you." I said that that was not a tenable proposition. Mr. Phelps said that it was quite true that his Government, owing to circumstances of which I was aware, had not been able to negotiate, but, as regarded the Treaty, he felt sure that he would be able to convince me that the American interpretation was correct. I said that, as regards the circumstances to which he had alluded, we had only to look to the United States' Government, and could not look beyond it. He would remember that at almost our first interview on my accession to office I had proposed to him to endeavour to procure the continuation of the recent arrangement for a year, although that arrangement was disadvantageous to Canada in that it gave the United States all it wanted, and gave Canada nothing in return. We had also pressed on the United States' Government the issue of a Joint Commission to investigate the matter, and that had also been refused. Further, on the 24th May, I made a proposal, personally indeed, but with all the weight which my official character could give, that Canadian action should be suspended, and negotiations should commence, and to this I had received no reply. In these circumstances, I could not feel that Her Majesty's Government had been wanting in methods of conciliation, and I begged him to send me his Statement of his case as quickly as possible, for in the meantime there was such unanimity among our Legal Advisers as to the interpretation of the Treaty of 1818 that I had nothing to submit to them. As regards the cases themselves, I had as yet no details, nor was I in possession of the Bill or of the Circular to which Mr. Bayard's recent telegram referred.

I am, &c.

(Signed) ROSEBERY.

No. 55.

Mr. Bramston to Sir J. Paussefate. (Received June 2.)

(Extract.)

Downing Street, June 2, 1886.

WITH reference to previous correspondence respecting the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch from the Governor-General of Canada, forwarding a copy of a Bill recently introduced into the Dominion House of Commons for the purpose of amending the Act 31 Vict., cap. 61, respecting fishing by foreign vessels in the territorial waters of the Dominion.

Inclosure in No. 55.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, May 19, 1886.

I HAVE the honour to inclose herewith a copy of a Bill* recently introduced in the Dominion House of Commons by my Minister of Marine and Fisheries, for the

For text of Bill, see p. 157.

purpose of amending the Act 81 Vict., cap 61, respecting fishing by foreign vessels in the territorial waters of the Dominion.

That Act was, as your Lordship is aware, framed with the object of giving effect to the Convention of 1818, by rendering liable to certain penalties all foreign fishing-vessels entering the territorial waters of the Dominion for any purpose not authorized by that Convention. It is provided under the 3rd section of the Act referred to that the penalty of forfeiture shall attach to any foreign vessel which "has been found fishing or preparing to fish, or to have been fishing" without a licence within the 3-mile limit. These words, which follow closely those of section 2 of the Imperial Act of 1819 (59 Geo. 111, cap. 38), appear to my Government to be insufficient for the purpose of giving effect to the intentions of the framers of the Convention of 1818, inasmuch as, while the penalty of forfeiture is attached to foreign vessels found fishing or preparing to fish, or having been fishing within the 3-mile limit, it is not clear that under them the same penalty would attach to vessels entering the territorial waters in contravention of the stipulations of the Convention, for a purpose other than those of sheltering, repairing damages, purchasing wood, and obtaining water, for which purposes alone, under the terms of Article I of the Convention, and of section 3 of the Imperial Act of 1819 above referred to, foreign fishing-vessels are permitted to enter the bays and harbours of the Dominion.

Your Lordship is no doubt aware that the decisions of the Canadian Courts leave it open to question whether the purchase of bait in Canadian waters does or does not constitute a preparation to fish within the meaning of the Imperial Act of 1819 and the Canadian Statute which it is now sought to amend. The decision of Chief Justice Sir William Young in the Vice-Admiralty Court of Nova Scotia, given in November 1871 in the case of the fishing-schooner "Nickerson," was to the effect that the purchasing of bait constituted such a preparation to fish within Canadian waters. The same point had, however, previously arisen in February 1871 in the Vice-Admiralty Court at St John, New Brunswick, in the case of the American fishing-vessel "White Fawn," when Mr. Justice Hazen decided that the purchase of bait within the 3-mile limit was not of itself a proof that the vessel was preparing to fish illegally within that limit.

There being, therefore, some doubt whether the intention of the Convention of 1818 is effectually carried out either by the Imperial or the Canadian Acts referred to, it has been thought desirable by my Government to have recourse to legislation removing all doubt as to the liability to forfeiture of all foreign fishing-vessels resorting to Canadian waters for purposes not permitted by Law or by Treaty.

As the Law now stands, if it should prove that the purchase of bait is not held by the Courts to constitute a preparation to fish illegally, there would be no remedy against foreign fishing-vessels frequenting the waters of the Dominion for purposes not permitted by the Convention of 1818, except—

1. That provided by section 4 of the Act of 1819, namely, a penalty of 200*l.*, recoverable in the Superior Courts from the persons violating the provisions of the Act. This penalty, however, only attaches to a refusal to depart from the bay or harbour which the vessel has illegally entered, or to a refusal or neglect to conform to any Regulations or directions made under the Act, and as the purpose for which the vessel has entered will in most cases have been accomplished before an order can have been given for her departure, it will be obvious that this penalty has very little practical utility.

2. The common law penalties attaching to a violation of the Imperial Statute above referred to in respect of illegally entering the bays and harbours of the Dominion. If, however, it were sought to enforce these penalties, their enforcement personally against the master of the vessel would result in his having ultimately to take his trial for a misdemeanour, while he would, in the first instance, be required to find bail to a considerable amount, a result which would, in the opinion of my Government, be regarded as more oppressive than the detention of the offending vessel subject to the investigation of her case by the Vice-Admiralty Courts.

I have, &c.

(Signed) LANSDOWNE.

The Earl of Rosebery to Mr. Phelps.

Sir,

Foreign Office, June 3, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 1st instant, in which you inclose a copy of a telegram from Mr. Bayard protesting against the Bill now before the Canadian Parliament relative to the Fishery question; and I beg leave to acquaint you, in reply, that the subject shall receive the early and careful consideration of Her Majesty's Government.

I have, &c.

(Signed) ROSEBERY.

Sir J. Pouncefote to Sir R. Herbert.

Sir,

Foreign Office, June 3, 1886.

I AM directed by the Earl of Rosebery to transmit to you a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a second note from Mr. Bayard on the subject of the North American fisheries;* and I am to suggest that, if Earl Granville sees no objection, the Government of Canada may be requested, by telegraph, to furnish any observations on this note (which has been communicated to the Marquis of Lansdowne) in addition to those which they may offer on Mr. Bayard's note referred to in my letter of the 26th ultimo.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, June 4, 1886.

I HAVE received your despatch of the 11th ultimo, inclosing a copy of Mr. Bayard's note relative to the Fishery question and to the seizure of United States' vessels in Canadian ports; and I have to acquaint you, in reply, that this communication shall receive the immediate and friendly consideration of Her Majesty's Government.

I am, &c.

(Signed) ROSEBERY.

Mr. Bramston to Sir J. Pouncefote.—(Received June 5.)

Sir,

Downing Street, June 4, 1886.

WITH reference to previous correspondence relative to the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, copies of despatches and telegrams which have passed between the Secretary of State and the Governor-General of Canada on the subject.

I am, &c.

(Signed) JOHN BRAMSTON.

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Inclosure 1 in No. 59.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, May 1, 1886.

AS I observe that some comments have been made in the London press upon the alleged detention of an American schooner at Baddeck, Cape Breton, for violation of the Fishery Laws of the Dominion, it may be as well that I should submit to you the following statement of the facts of the case, with which I have been supplied by my Minister of Marine and Fisheries.

2. On the evening of the 22nd April the American schooner "Joseph Story," Captain J. L. Anderson, of Gloucester, Massachusetts, anchored off the harbour of Baddeck. On the following morning the captain came ashore, bought some supplies, engaged a man, took him on board, and sailed without reporting to the Customs authorities. The Collector at Baddeck, Mr. L. G. Campbell, upon this telegraphed to the Sub-Collector at Bras d'Or, instructing him to detain the vessel, and at the same time reported his own action in the matter, by telegram, to the Minister of Customs.

3. In compliance with these instructions, the Sub-Collector at Bras d'Or detained the vessel, which proved to have clearances from St. Peter's to Aspy Bay, on a trading voyage.

4. On the 24th April the Minister of Customs telegraphed to Mr. Campbell that the vessel should be allowed to proceed on condition that the man illegally shipped be put on shore, the captain being formally warned by the Collector not to repeat the offence.

5. Your Lordship will observe that this vessel, being an American schooner, rendered herself liable to seizure for violation of the Customs Law by not reporting when she touched at Baddeck, as well as of the Coasting Laws by plying for trade between Canadian ports. The Collector's first telegram to the Minister of Customs stated that she was a fishing schooner, and on that information the telegram above referred to was sent, ordering her not to be longer detained provided the conditions attached were complied with. If it had been known that the case was one of trading illegally, the vessel would, without doubt, have been held for violation of the Customs Law. By the time, however, when the Minister of Customs had been made aware of the actual facts of the case she had already been released and permitted to proceed on her voyage.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 59.

Earl Granville to the Marquis of Lansdowne.

(Telegraphic.)

Downing Street, May 10, 1886.

PLEASE telegraph early full particulars of the seizure of the "David J. Adams" by Canadian authorities.

Inclosure 3 in No. 59.

The Marquis of Lansdowne to Earl Granville.

(Telegraphic.)

Ottawa, May 10, 1886.

SCHOONER "David J. Adams" was buying bait at Digby, did not report, as required by law, to Collector, and concealed her name and port of registry; is now detained at Digby in charge of Collector, and will be tried before Vice-Admiralty Court at Halifax for violation of Dominion Fishery Law of 1868, for contravention of Convention of 1818, and for violation of Customs Law by not reporting to Collector. Question of limits of territorial waters not raised.

Inclosure 4 in No. 59.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, May 11, 1886.

I HAD the honour to send your Lordship yesterday a telegram giving particulars of the detention on the 7th instant, at Digby, Nova Scotia, of the United States' schooner "David J. Adams" for breach of the Customs and Fishery Laws.

2. Your Lordship will observe that the case was one in which there was no doubt that the vessel had knowingly entered a Canadian port for an illegal purpose, her captain having endeavoured to conceal her name and port of registry. The evidence on this point, and also the proof that she had bought bait in large quantities, was, I understand, ample.

3. She had, in addition to this, violated sections 25 and 29 of the Customs Act of 1883 (46 Vict., cap. 12), having been for fully twenty-four hours in port without reporting to the Collector of Customs.

4. In consequence of the above occurrences, Captain P. A. Scott, R.N., in command of the fisheries police steamer "Lansdowne," took possession of the schooner and towed her to St. John, New Brunswick. Instructions had in the meanwhile been sent to him by telegraph, as soon as the Fisheries Department had been advised of the seizure, to detain the "David J. Adams" at Digby, it being thought best that the vessel should be libelled and the case tried in the Vice-Admiralty Court of the province in which the offence had been committed. In compliance with these instructions, Captain Scott took the "David J. Adams" back to Digby, where she now remains in charge of the Collector of Customs.

5. Proceedings will be taken against her: (1) for violation of the Customs Act above referred to; (2) for violation of the Dominion Fishery Act, 1868 (31 Vict., cap. 61); (3) for contravention of the provisions of the Convention of 1818 as enacted in the Imperial Act of 1819 (59 Geo. III, cap. 38).

6. No question has in this case arisen with regard to the limits of the territorial waters of the Dominion.

7. As your Lordship is no doubt aware, American fishing-vessels frequenting the coast of Canada have been in the habit of depending to a great extent upon Canadian fishermen for their supplies of bait. It has been usual for such vessels hailing from New England ports, as soon as the supply with which they had provided themselves on starting for their trip had become exhausted, to renew it in Canadian waters. Such vessels, if compelled as soon as they ran short of bait to return from the Canadian Banks to an American port, would lose a great part of their fishing season, and be put to considerable expense and inconvenience. Some idea of the importance of this point may be formed from the fact that Mr. Joucas, Commissioner to the London Fisheries Exhibition, and a high authority on all matters connected with the fisheries of the Dominion, in a paper read before the British Association at Montreal in 1884, estimates the cost of the bait used by each vessel engaged in the cod fishery at one-fourth of the value of her catch of cod.

8. There can, however, be no doubt that, under the terms of the Convention of 1818, foreign fishing-vessels are absolutely precluded from resorting to Canadian waters for the purpose of obtaining supplies of bait, and in view of the injury which would result to the fishing interests of the Dominion, which the Convention of 1818 was manifestly intended to protect, if any facilities not expressly authorized by that Convention were conceded to foreign fishermen, my Government will, so long as the relations of the Dominion with the United States are regulated by the Convention, be disposed to insist upon a strict observance of its provisions in this respect.

9. I will keep your Lordship informed of any further occurrences which may take place in connection with this question.

I have, &c.
(Signed) LANSDOWNE.

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Inclosure 5 in No. 59.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, May 10, 1886.

I HAVE the honour to inform you that the American fishing-schooner "Ella M. Doughty" was seized at St. Ann's, Nova Scotia, by Sub-Collector McAulay, who is reported by the Collector of Customs at Baddeck, Mr. L. G. Campbell, to have proof that the captain bought bait at St. Ann's without reporting to the Customs authorities.

2. Mr. Campbell further telegraphs that the captain acknowledges the facts and showed the bait bought, but claims that he held a permit or licence, signed by the Collector of Customs at Portland, Maine, to touch and trade at any foreign port.

3. The "Ella M. Doughty" has been held for not reporting, and an inquiry is now proceeding in order to ascertain whether there has or has not been an infraction of the Fishery Law of the Dominion.

I have, &c.

(Signed) LANSDOWNE.

No. 60.

Mr. Wingfield to Sir J. Pouncefote.—(Received June 5.)

Sir,

Downing Street, June 5, 1886.

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 3rd instant, forwarding a copy of a despatch from Her Majesty's Minister at Washington, with a note from Mr. Bayard relative to the North American Fisheries question.

Lord Granville desires me to transmit to you, for the information of the Earl of Rosebery, a copy of a telegram which he has addressed to the Governor-General of Canada, requesting the observations of the Dominion Government upon the subject of this note.

I am, &c.

(Signed) EDWARD WINGFIELD.

Inclosure in No. 60.

Earl Granville to the Marquis of Lansdowne.

(Telegraphic.)

Downing Street, June 4, 1886.

HER Majesty's Government desire to be furnished with observations of Dominion Government on Bayard's note 20th May as soon as possible.

No. 61.

Mr. Phelps to the Earl of Rosebery.—(Received June 7.)

My Lord,

Legation of the United States, London, June 2, 1886.

SINCE the conversation I had the honour to hold with your Lordship on the morning of the 29th ultimo I have received from my Government a copy of the Report of the Consul-General of the United States at Halifax, giving full details and depositions relative to the seizure of the "David J. Adams," and the correspondence between the Consul-General and the Colonial authorities in reference thereto.

The Report of the Consul-General, and the evidence annexed to it, appear fully to sustain the points I submitted to your Lordship in the interview above referred to, touching the seizure of this vessel by the Canadian officials.

I do not understand it to be claimed by the Canadian authorities that the vessel seized had been engaged, or was intending to engage, in fishing within any limit prohibited by the Treaty of 1818. The occupation of the vessel was exclusively

deep-sea fishing, a business in which it had a perfect right to be employed. The ground upon which the capture was made was that the master of the vessel had purchased of an inhabitant of Nova Scotia, near the port of Digby in that province a day or two before, a small quantity of bait to be used in fishing in the deep sea outside the 3-mile limit.

The question presented is whether under the terms of the Treaty, and the construction placed upon them in practice for many years by the British Government, and in view of the existing relations between the United States and Great Britain, that transaction affords a sufficient reason for making such a seizure, and for proceeding under it to the confiscation of the vessel and its contents.

I am not unaware that the Canadian authorities, conscious, apparently, that the affirmative of this proposition could not easily be maintained, deemed it advisable to supplement it with a charge against the vessel of a violation of the Canadian Customs Act of 1883, in not reporting her arrival at Digby to the Customs officer. But this charge is not the one on which the vessel was seized, or which must now be principally relied on for its condemnation, and standing alone could hardly, even if well founded, be the source of any serious controversy. It would be at most, under the circumstances, only an accidental and purely technical breach of a Custom-house Regulation, by which no harm was intended, and from which no harm came, and would, in ordinary cases, be easily condoned by an apology, and perhaps the payment of costs.

But trivial as it is, this charge does not appear to be well founded in point of fact. Digby is a small fishing settlement, and its harbour not defined. The vessel had moved about and anchored in the outer part of the harbour, having no business at or communication with Digby, and no reason for reporting to the officer of Customs.

It appears by the Report of the Consul-General to be conceded by the Customs authorities there that fishing-vessels have for forty years been accustomed to go in and out of the bay at pleasure, and have never been required to send ashore and report when they had no business with the port, and made no landing, and that no seizure had ever before been made or claimed against them for so doing.

Can it be reasonably insisted under these circumstances that by the sudden adoption, without notice, of a new rule, a vessel of a friendly nation should be seized and forfeited for doing what all similar vessels had for so long a period been allowed to do without question?

It is sufficiently evident that the claim of a violation of the Customs Act was an afterthought brought forward to give whatever added strength it might to the principal claim on which the seizure had been made.

Recurring, then, to the only real question in the case, whether the vessel is to be forfeited for purchasing bait of an inhabitant of Nova Scotia to be used in lawful fishing, it may be readily admitted that, if the language of the Treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would be prohibited from entering a Canadian port "for any purpose whatever," except to obtain wood or water, to repair damages, or to seek shelter. Whether it would be liable to the extreme penalty of confiscation for a breach of this prohibition, in a trifling and harmless instance, might be quite another question.

Such a literal construction is best refuted by considering its preposterous consequences. If a vessel enters a port to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence, it would, upon this construction, be held to violate the Treaty stipulations maintained between two enlightened, maritime, and most friendly nations, whose ports are freely open to each other in all other places and under all other circumstances. If a vessel is not engaged in fishing, she may enter all ports. But if employed in fishing not denied to be lawful, she is excluded, though on the most innocent errand. She may buy water, but not food or medicine; wood, but not coal. She may repair rigging, but not purchase a new rope, though the inhabitants are desirous to sell it. If she even entered the port (having no other business) to report herself to the Custom-house, as the vessel in question is now seized for not doing, she would be equally within the interdiction of the Treaty. If it be said these are extreme instances of violation of the Treaty, not likely to be insisted on, I reply that no one of them is more extreme than the one relied upon in this case.

I am persuaded that your Lordship will, upon reflection, concur with me that

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an intention so narrow, and in its results so unreasonable and so unfair, is not to be attributed to the High Contracting Parties who entered into this Treaty.

It seems to me clear that the Treaty must be construed in accordance with those ordinary and well-settled rules applicable to all written instruments, which, without such salutary assistance, must constantly fail of their purpose. By these rules the letter often gives way to the intent, or, rather, is only used to ascertain the intent. The whole document will be taken together, and will be considered in connection with the attendant circumstances, the situation of the parties, and the object in view. And thus the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended.

Upon these principles of construction, the meaning of the clause in question does not seem doubtful. It is a Treaty of friendship, and not of hostility. Its object was to define and protect the relative rights of the people of the two countries in these fisheries, not to establish a system of non-intercourse, or the means of mutual and unnecessary annoyance. It should be judged in view of the general rules of international comity, and of maritime intercourse and usage, and its restrictions considered in the light of the purposes they were designed to serve.

Thus regarded, it appears to me clear that the words, "for no other purpose whatever," as employed in the Treaty, mean no other purposes inconsistent with the provisions of the Treaty, or prejudicial to the interests of the provinces or their inhabitants, and were not intended to prevent the entry of American fishing-vessels into Canadian ports for innocent and mutually beneficial purposes, or unnecessarily to restrict the free and friendly intercourse customary between all civilized maritime nations, and especially between the United States and Great Britain. Such, I cannot but believe, is the construction that would be placed upon this Treaty by any enlightened Court of Justice.

But even were it conceded that if the Treaty was a private contract instead of an international one, a Court, in dealing with an action upon it, might find itself hampered by the letter from giving effect to the intent, that would not be decisive of the present case.

The interpretation of Treaties between nations in their intercourse with each other proceeds upon broader and higher considerations. The question is not what is the technical effect of the words, but what is the construction most consonant to the dignity, the just interests, and the friendly relations of the sovereign Powers. I submit to your Lordship that a construction so harsh, so unfriendly, so unnecessary, and so irritating as that set up by the Canadian authorities is not such as Her Majesty's Government has been accustomed either to accord or to submit to. It would find no precedent in the history of British diplomacy, and no provocation in any action or assertion of the Government of the United States.

These views derive great if not conclusive force from the action of the British Parliament on the subject, adopted very soon after the Treaty of 1818 took effect, and continued without change to the present time. An Act of Parliament (59 Geo. III, cap. 38) was passed on the 14th June, 1819, to provide for carrying into effect the provisions of the Treaty. After reciting the terms of the Treaty, it enacts (in substance) that it shall be lawful for His Majesty, by Orders in Council, to make such Regulations and to give such directions, orders, and instructions to the Governor of Newfoundland, or to any officer or officers in that station, or to any other persons, "as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of said Convention with relation to the taking, drying, and curing of fish by inhabitants of the United States of America, in common with British subjects, within the limits set forth in the aforesaid Convention."

It further enacts that any foreign vessel engaged in fishing, or preparing to fish, within 3 marine miles of the coast (not authorized to do so by Treaty) shall be seized or forfeited upon prosecution in the proper Court.

It further provides as follows:—

"That it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbours of His Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever; subject, nevertheless, to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council under the authority of this

Act; and by any Regulations which shall be issued by the Governor, or person exercising the office of Governor, in any such parts of His Majesty's dominions in America, under or in pursuance of any such Order in Council as aforesaid."

It further enacts as follows:—

"That if any person or persons, upon requisition made by the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor or person exercising the office of Governor in any other parts of His Majesty's dominions in America as aforesaid, or by any officer or officers acting under such Governor or person exercising the office of Governor, in the execution of any orders or instructions from His Majesty in Council, shall refuse to depart from such bays or harbours; or if any person or persons shall refuse or neglect to conform to any Regulations or directions which shall be made or given for the execution of any of the purposes of this Act; every such person so refusing, or otherwise offending against this Act, shall forfeit the sum of 200*l.*, to be recovered," &c.

It will be perceived from these extracts, and still more clearly from a perusal of the entire Act, that while reciting the language of the Treaty in respect to the purposes for which American fishermen may enter British ports, it provides no forfeiture or penalty for any such entry, unless accompanied either (1) by fishing, or preparing to fish, within the prohibited limits; or (2) by the infringement of restrictions that may be imposed by Orders in Council to prevent such fishing, or the drying or curing of fish, or the abuse of privileges reserved by the Treaty; or (3) by a refusal to depart from the bays or harbours upon proper requisition.

It thus plainly appears that it was not the intention of Parliament, nor its understanding of the Treaty, that any other entry by an American fishing-vessel into a British port should be regarded as an infraction of its provisions, or as affording the basis of proceedings against it.

No other Act of Parliament for the carrying out of this Treaty has ever been passed. It is unnecessary to point out that it is not in the power of the Canadian Parliament to enlarge or alter the provisions of the Act of the Imperial Parliament, or to give to the Treaty either a construction or a legal effect not warranted by that Act.

But until the effort which I am informed is now in progress in the Canadian Parliament for the passage of a new Act on this subject, introduced since the seizures under consideration, I do not understand that any Statute has ever been enacted in that Parliament which attempts to give any different construction or effect to the Treaty from that given by the Act of 59 Geo. III.

The only Provincial Statutes which, in the proceedings against the "David J. Adams," that vessel has thus far been charged with infringing are the Colonial Acts of 1868, 1870, and 1883. It is therefore fair to presume that there are no other Colonial Acts applicable to the case, and I know of none.

The Act of 1868, among other provisions not material to this discussion, provides for a forfeiture of foreign vessels "found fishing, or preparing to fish, or to have been fishing in British waters within 3 marine miles of the coast;" and also provides a penalty of 400 dollars against a master of a foreign vessel within the harbour who shall fail to answer questions put in an examination by the authorities. No other act is by this Statute declared to be illegal, and no other penalty or forfeiture is provided for.

The very extraordinary provisions in this Statute for facilitating forfeitures and embarrassing defence against or appeal from them not material to the present case would, on a proper occasion, deserve very serious attention.

The Act of 1870 is an amendment of the Act just referred to, and adds nothing to it affecting the present case.

The Act of 1883 has no application to the case, except upon the point of the omission of the vessel to report to the Customs officer, already considered.

It results, therefore, that, at the time of the seizure of the "David J. Adams" and other vessels, there was no Act whatever, either of the British or Colonial Parliaments, which made the purchase of bait by those vessels illegal, or provided for any forfeiture, penalty, or proceedings against them for such a transaction; and even if such purchase could be regarded as a violation of that clause of the Treaty which is relied on, no Law existed under which the seizure could be justified. It will not be contended that Custom-house authorities or Colonial Courts can seize and condemn vessels for a breach of the stipulations of a Treaty when no legislation exists which authorizes them to take cognizance of the subject, or invests them with any jurisdiction in the premises. Of this obvious conclusion the Canadian authorities seem to be quite

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aware. I am informed that since the seizures they have pressed, or are pressing, through the Canadian Parliament in much haste an Act which is designed, for the first time in the history of the legislation under this Treaty, to make the facts upon which the American vessels have been seized illegal, and to authorize proceedings against them therefor.

What the effect of such an Act will be in enlarging the provisions of an existing Treaty between the United States and Great Britain need not be considered here. The question under discussion depends upon the Treaty, and upon such legislation, warranted by the Treaty, as existed when the seizures took place.

The practical construction given to the Treaty down to the present time has been in entire accord with the conclusions thus deduced from the Act of Parliament. The British Government has repeatedly refused to allow interference with American fishing-vessels, unless for illegal fishing, and has given explicit orders to the contrary.

On the 26th May, 1870, Mr. Thornton, the British Minister at Washington, communicated officially to the Secretary of State of the United States copies of the orders addressed by the British Admiralty to Admiral Wellesley, commanding Her Majesty's naval forces on the North American Station, and of a letter from the Colonial Department to the Foreign Office, in order that the Secretary might "see the nature of the instructions to be given to Her Majesty's and the Canadian officers employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada." Among the documents thus transmitted is a letter from the Foreign Office to the Secretary of the Admiralty, in which the following language is contained.

"The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

"In view of this change, and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries that they are not to seize any vessel unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself captured, within 3 miles of land."

In the letter from the Lords of the Admiralty to Vice-Admiral Wellesley of the 5th May, 1870, in accordance with the foregoing request, and transmitting the letter above quoted from, there occurs the following language:—

"My Lords desire me to remind you of the extreme importance of Commanding Officers of the ships selected to protect the fisheries exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation, that no vessel should be seized unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and that the vessel is captured, within 3 miles of land."

Lord Granville, in transmitting to Sir John Young the aforesaid instructions, makes use of the following language:—

"Her Majesty's Government do not doubt that your Ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them."

These instructions were again officially stated by the British Minister at Washington to the Secretary of State of the United States, in a letter dated the 11th June, 1870.

Again, in February 1871, Lord Kimberley, Colonial Secretary, wrote to the Governor-General of Canada as follows:—

"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59 Geo. III, cap. 38; but Her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States' Government, under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

And in a subsequent letter from the same source to the Governor-General the following language is used:—

"I think it right, however, to add that the responsibility of determining what is the true construction of a Treaty made by Her Majesty with any foreign Power must

remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of the Treaty rights may depend not only on the literal construction of the Treaty, but on the moderation and reasonableness with which these rights are asserted."

I am not aware that any modification of these instructions, or any different rule from that therein contained, has ever been adopted or sanctioned by Her Majesty's Government.

Judicial authority upon this question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known, but in no case, so far as I can ascertain, has a seizure of an American vessel ever been enforced on the ground of the purchase of bait, or of any other supplies. On the hearing before the Halifax Fisheries Commission in 1877-78 this question was discussed, and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty either of fishing, or preparing to fish, within the prohibited limit.

And in the case of the "White Fawn," tried in the Admiralty Court at New Brunswick before Judge Hazen in 1870, I understand it to have been distinctly held that the purchase of bait, unless proved to have been in preparation for illegal fishing, was not a violation of the Treaty nor of any existing law, and afforded no ground for proceedings against the vessel.

But even were it possible to justify on the part of the Canadian authorities the adoption of a construction of the Treaty entirely different from that which has always heretofore prevailed, and to declare those acts criminal which have hitherto been regarded as innocent, upon obvious grounds of reason and justice, and upon common principles of comity to the United States' Government, previous notice should have been given to it or to the American fishermen of the new and stringent restrictions it was intended to enforce.

If it was the intention of Her Majesty's Government to recall the instructions which I have shown had been previously and so explicitly given relative to interference with American vessels, surely notice should have been given accordingly.

The United States have just reason to complain, even if these restrictions could be justified by the Treaty, or by the Acts of Parliament passed to carry it into effect, that they should be enforced in so harsh and unfriendly a manner, without notice to the Government of the change of policy, or to the fishermen of the new danger to which they were thus exposed.

In any view, therefore, which it seems to me can be taken of this question, I feel justified in pronouncing the action of the Canadian authorities in seizing and still retaining the "David J. Adams" to be not only unfriendly and discourteous, but altogether unwarrantable.

The seizure was much aggravated by the manner in which it was carried into effect. It appears that four several visitations and searches of the vessel were made by boats from the Canadian steamer "Lansdowne" in Annapolis Basin, Nova Scotia. The "Adams" was finally taken into custody, and carried out of the Province of Nova Scotia across the Bay of Fundy and into the port of St. John's, New Brunswick; and, without explanation or hearing, on the following Monday, the 10th May, taken back by an armed crew to Digby, in Nova Scotia. That, in Digby, the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such manner as to prevent its contents being read, and the request of the captain of the "David J. Adams," and of the United States' Consul-General, to be allowed to detach the writ from the mast, for the purpose of learning its contents, was positively refused by the Provincial official in charge. Nor was the United States' Consul-General able to learn from the Commander of the "Lansdowne" the nature of the complaint against the vessel, and his respectful application to that effect was fruitless.

From all the circumstances attending this case, and other recent cases like it, it seems to me very apparent that the seizure was not made for the purpose of enforcing any right or redressing any wrong. As I have before remarked, it is not pretended that the vessel had been engaged in fishing, or was intending to fish, in the prohibited waters, or that it had done, or was intending to do, any other injurious act. It was proceeding upon its regular and lawful business of fishing in the deep sea. It had received no request, and, of course, could have disregarded no request, to depart, and was, in fact, departing when seized; nor had its master refused to answer any questions put by the authorities.

It had violated no existing Law, and had incurred no penalty that any known Statute imposed.

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It seems to me impossible to escape the conclusion that this and other similar seizures were made by the Canadian authorities for the deliberate purpose of harassing and embarrassing the American fishing-vessels in the pursuit of their lawful employment, and the injury, which would have been a serious one if committed under a mistake, is very much aggravated by the motives which appear to have prompted it.

I am instructed by my Government earnestly to protest against these proceedings as wholly unwarranted by the Treaty of 1818, and altogether inconsistent with the friendly relations hitherto existing between the United States and Her Majesty's Government; to request that the "David J. Adams" and the other American fishing-vessels now under seizure in Canadian ports be immediately released; and that proper orders may be issued to prevent similar proceedings in the future; and I am also instructed to inform you that the United States will hold Her Majesty's Government responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within the territorial waters of British North America.

The real source of the difficulty that has arisen is well understood. It is to be found in the irritation that has taken place among a portion of the Canadian people on account of the termination, by the United States' Government, of the Treaty of Washington on the 1st July last, whereby fish imported from Canada into the United States, and which, so long as that Treaty remained in force, was admitted free, is now liable to the import duty provided by the General Revenue Laws. And the opinion appears to have gained ground in Canada that the United States may be driven, by harassing and annoying their fishermen, into the adoption of a new Treaty by which Canadian fish shall be admitted free.

It is not necessary to say that this scheme is likely to prove as mistaken in policy as it is indefensible in principle. In terminating the Treaty of Washington the United States were simply exercising a right expressly reserved to both parties by the Treaty itself, and of the exercise of which by either party neither can complain. They will not be coerced by wanton injury into the making of a new one. Nor would a negotiation that had its origin in mutual irritation be promising of success. The question now is not what fresh Treaty may or might be desirable, but what is the true and just construction, as between the two nations, of the Treaty that already exists.

The Government of the United States, approaching this question in the most friendly spirit, cannot doubt that it will be met by Her Majesty's Government in the same spirit, and feels every confidence that the action of Her Majesty's Government in the premises will be such as to maintain the cordial relations between the two countries that have so long happily prevailed.

I have, &c.
(Signed) E. J. PHELPS.

No. 62.

Sir R. Herbert to Sir J. Pauncefoot.—(Received June 10.)

Sir,

Downing Street, June 9, 1886.

WITH reference to previous correspondence, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Rosebery, copies of two despatches from the Governor-General of Canada relative to the North American Fisheries question.

I am, &c.
(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 62.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, May 26, 1886.

I HAVE the honour to forward to your Lordship herewith a copy of a further despatch from Sir Lionel West in connection with Mr. Bayard's note on the questions arising from the seizures of American fishing-vessels in Canadian waters.

I have, &c.
(Signed) LANSDOWNE.

Inclosure 2 in No. 62.

Sir L. West to the Marquis of Lansdowne.

My Lord,

Washington, May 21, 1886.

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 17th instant, and to inform your Lordship that I took an opportunity of communicating it to the Secretary of State, who expressed great satisfaction at the conciliatory language used by your Excellency.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 3 in No. 62.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Government House, Ottawa, May 26, 1886.

WITH reference to the concluding paragraph of my despatch of the 19th instant, reporting the seizure of the American fishing-schooner "Ella M. Doughty," I have the honour to inform your Lordship that the vessel in question is being proceeded against in the same way as the "David J. Adams," viz., for violation of the Customs Act of 1883, of the Dominion Fishery Act of 1868, and for contravention of the Treaty of 1818.

I have, &c.

(Signed) LANSDOWNE.

No. 63.

Sir L. West to the Earl of Rosebery.—(Received June 11.)

My Lord,

Washington, May 30, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, protesting against the provisions of the Bill in the Canadian Parliament as an assumption of jurisdiction unwarranted by existing Conventions between Great Britain and the United States, and informing me that the United States' Minister in London has been instructed in this sense.

At an interview which I had yesterday with Mr. Bayard he again alluded to the right of the Dominion Government to interpret a Treaty between Great Britain and the United States, but he was not at the time aware of the proceedings in the Canadian Parliament, and only sought for information as to the relation of the Legislatures of Great Britain and Canada. It was only after I left him that he received the copy of the Bill in question, upon which he addressed to me the note copy of which accompanies this despatch.

I have forwarded a copy of Mr. Bayard's note to the Marquis of Lansdowne for his Excellency's information.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 63.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, May 29, 1886.

I HAVE just received an official imprint of House of Commons Bill No. 136, now pending in the Canadian Parliament, entitled "An Act further to amend the Act respecting Fishing by Foreign Vessels," and am informed that it has passed the House, and is now pending in the Senate.

This Bill proposes the forcible search, seizure, and forfeiture of any foreign vessel within any harbour in Canada, or hovering within 3 marine miles of any of the coasts,

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bays, creeks, or harbours in Canada, where such vessel has entered such waters for any purpose not permitted by the laws of nations, or by Treaty or Convention, or by any law of the United Kingdom or of Canada now in force.

I hasten to call your attention to the wholly unwarranted proposition of the Canadian authorities, through their local agents, arbitrarily to enforce according to their own construction the provisions of any Convention between the United States and Great Britain, and, by the interpolation of language not found in any such Treaty, and by interpretation not claimed or conceded by either party to such Treaty, to invade and destroy the commercial rights and privileges of citizens of the United States under and by virtue of Treaty stipulations with Great Britain and Statutes in that behalf made and provided.

I have also been furnished with a copy of Circular No. 371, purporting to be from the Customs Department at Ottawa, dated the 7th May, 1886, and to be signed by J. Johnson, Commissioner of Customs, assuming to execute the provisions of the Treaty between the United States and Great Britain concluded the 20th October, 1818; and printed copies of a "Warning" purporting to be issued by George E. Foster, Minister of Marine and Fisheries, dated Ottawa, the 5th March, 1886, of a similar tenour, although capable of unequal results in its execution.

Such proceedings I conceive to be flagrantly violative of the reciprocal commercial privileges to which citizens of the United States are lawfully entitled under Statutes of Great Britain and the well-defined and publicly proclaimed authority of both countries, besides being in respect of the existing Conventions between the two countries an assumption of jurisdiction entirely unwarranted, and which is wholly denied by the United States.

In the interest of the maintenance of peaceful and friendly relations I give you my earliest information on the subject, adding that I have telegraphed Mr. Phelps, our Minister at London, to make earnest protest to Her Majesty's Government against such arbitrary, unlawful, unwarranted, and unfriendly action on the part of the Canadian Government and its officials, and have instructed Mr. Phelps to give notice that the Government of Great Britain will be held liable for all losses and injuries to citizens of the United States and their property caused by the unauthorized and unfriendly action of the Canadian officials to which I have referred.

I have, &c.

(Signed) T. F. BAYARD.

No. 64.

Sir L. West to the Earl of Rosebery.—(Received June 11.)*

My Lord,

Washington, May 30, 1886.

I HAVE the honour to inform your Lordship that the fine imposed on the Nova Scotia fishing-schooner "Sisters," seized at Portland (Maine) for a violation of the Customs Regulations, has been remitted by the Acting Secretary of the Treasury.

I inclose herewith an article from the "New York Herald" in connection therewith.†

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 65.

Sir L. West to the Earl of Rosebery.—(Received June 11.)

My Lord,

Washington, June 3, 1886.

I HAVE the honour to inclose to your Lordship herewith copies of two letters which I have received from Mr. Bayard respecting the proceeding of the Canadian authorities against American fishing-vessels. I have explained to Mr. Bayard that I am powerless to deal with these matters.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

* Copy to Colonial Office, June 15.

† Not printed.

Inclosure 1 in No. 65.

Mr. Bayard to Sir L. West.

My dear Sir Lionel,

Department of State, Washington, June 1, 1886.

I SEND you a copy of a telegram I have received from our Consul-General at Halifax, reporting additional cases of interference with American vessels by the Canadian authorities.

There is no possible justification apparent in the repetition and continuance of such harsh and harassing action on the part of the provincial authorities against peaceful commerce. It can only be productive of injury to the efforts to establish a just mutual understanding, and obstruct the amicable international arrangement of a vexed question.

Very sincerely yours,
(Signed) T. F. BAYARD.

Inclosure 2 in No. 65.

Mr. Phelan to Mr. Bayard.

(Telegraphic.)

Halifax, Nova Scotia, May 30, 1886.

CUTTER "Houlett" boarded American vessel at Canso and searched her. I have not particulars.

Schooner "Matthew Keany" detained one day at Souris, Prince Edward's Island, for purchasing ten bushels potatoes. The potatoes were landed and vessel allowed to go.

Inclosure 3 in No. 65.

Mr. Bayard to Sir L. West.

My dear Sir Lionel,

Department of State, Washington, June 2, 1886.

A TELEGRAM from Eastport, in Maine, to the Member of Congress from that district, announces a threat by Dominion Collectors of Customs to seize American boats if they buy herring for canning in the Dominion weirs.

This additional threatened inhibition of trade relates to the sardine industry, which consists in canning in the United States very small and young herring, which I am informed are caught very closely inshore in weirs in Canadian waters by the inhabitants and sold to citizens of the United States.

The occupation is carried on solely by Canadian fishermen along the coasts of their own country, so that the interference suggested is with their freedom of contract to dispose of property lawfully, the result of their own labours, because the sale is to citizens of the United States.

It is important that the facts should be made known plainly.

Yours, &c.
(Signed) T. F. BAYARD.

No. 66.

Sir L. West to the Earl of Rosebery.—(Received June 14.)

My Lord,

Washington, June 4, 1886.

WITH reference to my despatch of the 11th May, I have the honour to inclose to your Lordship herewith the text of the Bill relating to American shipping which has passed Congress. Section 12 refers to reciprocity of tonnage dues, and section 17 is the retaliatory clause directed against Canada.

Official copies of the Act, when approved by the President, will be forwarded.*

I have, &c.

(Signed) L. S. SACKVILLE WEST.

* The Act was approved June 19, 1886.

Inclosure in No. 66.

Extract from the Bill relating to American Shipping.

SECTION 12. That the President be, and hereby is, directed to cause the Governments of foreign countries which, at any of their ports, impose on American vessels a tonnage tax or lighthouse dues, or other equivalent tax or taxes, or any other fees, charges, or dues, to be informed of the provisions of the preceding section, and invited to co-operate with the Government of the United States in abolishing all lighthouse dues, tonnage taxes, or other equivalent tax or taxes on, and also all other fees for official services to the vessels of the respective nations employed in the trade between the ports of such foreign country and the ports of the United States.

Sect. 17. That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels in the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is hereby authorized to issue his Proclamation excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such Proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said Proclamation from the exercise of any commercial privileges shall do any act prohibited by said Proclamation in the ports, harbours, or waters of the United States for or on account of such vessel, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this act, or aiding and abetting any other person in such opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

No. 67.

The Earl of Rosebery to Mr. Phelps.

Sir,

Foreign Office, June 14, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 2nd instant, containing representations which you have been instructed by your Government to make respecting certain seizures of American fishing-vessels which have recently taken place in Canadian ports; and I beg leave to acquaint you, in reply, that the subject will receive the early and careful consideration of Her Majesty's Government.

I have, &c.

(Signed) ROSEBERY.

No. 68.

Sir L. West to the Earl of Rosebery.—(Received June 18.)

My Lord,

Washington, June 8, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a further note which I have received from the Secretary of State protesting against the action of the Canadian Customs authorities at the port of St. Andrew's, New Brunswick, in the case of the American fishing-vessel "Annie M. Jordan."

Your Lordship will observe that it is again intimated (see note of the 29th May,

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1886) that Her Majesty's Government will be held liable for the loss and damage consequent on the seizures and detention of American vessels.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 68.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, June 7, 1886.

I REGRET exceedingly to communicate that report is to-day made to me, accompanied by affidavit, of the refusal of the Collector of Customs of the port of St. Andrew's, New Brunswick, to allow the master of the American schooner "Annie M. Jordan," of Gloucester, Massachusetts, to enter the said vessel at that port, although properly documented as a fishing-vessel, with permission to touch and trade at any foreign port or place during her voyage.

The object of such entry was explained by the master to be the purchase and exportation of certain merchandize" (possibly fresh fish for food, or bait for deep-sea fishing).

The vessel was threatened with seizure by the Canadian authorities, and her owners allege that they have sustained damage from this refusal of commercial rights.

I earnestly protest against this unwarranted withholding of lawful commercial privileges from an American vessel and her owners, and for the loss and damage consequent thereon the Government of Great Britain will be held liable.

I have, &c.

(Signed) T. F. BAYARD.

No. 69.

The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, June 21, 1886.

I HAVE received your despatch of the 30th ultimo, inclosing a copy of a note from Mr. Bayard protesting against the provisions of the Bill No. 136 now pending in the Canadian Parliament, and also against the terms of the Customs Circular No. 371; and I have to request that you will inform Mr. Bayard, in reply, that the matter will receive careful attention after the necessary communication with the Dominion Government.

I am, &c.

(Signed) ROSEBERY.

No. 70.

Sir J. Pouncefote to Sir R. Herbert.

Sir,

Foreign Office, June 21, 1886.

I AM directed by the Earl of Rosebery to transmit to you, to be laid before Earl Granville, a copy of a despatch from Her Majesty's Minister at Washington, inclosing copy of a note from the United States' Secretary of State protesting against the action of the Canadian Customs authorities at the port of St. Andrew's, New Brunswick, in the case of the United States' fishing-vessel "Annie M. Jordan;"* and I am to state that Lord Rosebery would be glad to be furnished with a Report from the Dominion Government in regard to this case.

I am, &c.

(Signed) JULIAN POUNCEFOTE.

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No. 71.

Sir L. West to the Earl of Rosebery.—(Received June 28.)

My Lord,

Washington, June 15, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State requesting the attention of Her Majesty's Government to certain warnings alleged to have been given to American fishing-vessels by the Canadian authorities to keep outside imaginary lines drawn from headlands to headlands, which he characterizes as wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 71.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, June 14, 1886.

THE Consul-General of the United States at Halifax communicates to me the information derived by him from the Collector of Customs at that port, to the effect that American fishing-vessels will not be permitted to land fish at that port of entry for transportation in bond across the province.

I have also to inform you that the masters of the four American fishing-vessels of Gloucester, Massachusetts—"Martha A. Bradly," "Rattler," "Eliza Boynton," and "Pioneer"—have severally reported to the Consul-General at Halifax that the Sub-Collector of Customs at Canso had warned them to keep outside an imaginary line drawn from a point 3 miles outside Canso Head to a point 3 miles outside St. Esprit, on the Cape Breton coast, a distance of 40 miles. This line, for nearly its entire continuance, is distant 12 to 25 miles from the coast. The same masters also report that they were warned against going inside an imaginary line drawn from a point 3 miles outside North Cape, on Prince Edward Island, to a point 3 miles outside of East Point, on the same island, a distance of over 100 miles, and that this last-named line was for nearly that entire distance about 30 miles from the shore.

The same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur.

Such warnings are, as you must be well aware, wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction by the Provincial officials.

It becomes my duty, in bringing this information to your notice, to request that if any such orders for interference with the unquestionable rights of the American fishermen to pursue their business without molestation at any point not within 3 marine miles of the shores, and within the defined limits as to which renunciation of the liberty to fish was expressed in the Treaty of 1818, may have been issued, the same may at once be revoked as violative of the rights of citizens of the United States under Convention with Great Britain.

I will ask you to bring this subject to the immediate attention of Her Britannic Majesty's Government to the end that proper remedial orders may be forthwith issued.

It seems most unfortunate and regrettable that questions which have been long since settled between the United States and Great Britain should now be sought to be revived.

I have, &c.

(Signed) T. F. BAYARD.

No. 72.

Sir R. Herbert to Sir J. Pauncefoot.—(Received July 3.)

Sir,

Downing Street, July 3, 1886.

I AM directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Rosebery, a copy of a despatch, with its inclosures, from the Governor-General of Canada relative to the case of the Canadian schooner "Sisters."

I am, &c.

(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 72.

The Marquis of Lansdowne to Earl Granville.

My Lord,

Citadel, Quebec, June 9, 1886.

I HAVE the honour to forward herewith, for your Lordship's information, copies of two despatches which I have received from Her Majesty's Minister at Washington in regard to the detention and subsequent release of the Canadian schooner "Sisters," at Portland, Maine, for violation of the Customs Regulations of the United States.

2. The vessel in question arrived in the port of Portland with a cargo of fish, and became liable to a fine of 500 dollars for the failure of her captain to produce a manifest of her cargo upon his arrival within the limits of the Customs jurisdiction of the port. As, however, the United States' authorities were satisfied that there was no intention on the part of the captain of the "Sisters" to defraud the revenue, the fine was remitted and the vessel released.

I have communicated copies of Sir Lionel West's despatches to my Government.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 72.

Sir L. West to the Marquis of Lansdowne.

My Lord,

Washington, May 29, 1886.

I HAVE the honour to inclose herewith to your Excellency copy of the Report of the Collector of Customs, at Portland (Maine), in regard to the detention of the schooner "Sisters."

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 3 in No. 72.

Extract from the "Washington Republic" of May 29, 1886.

THE SEIZURE OF THE "SISTERS."—Acting Secretary Fairchild yesterday received a Report from Collector Anderson at Portland in regard to the alleged detention of the British schooner "Sisters," in which he says:—

"Herewith I transmit a statement of Jesse Ellis, Master of British schooner 'Sisters,' of Yarmouth, Nova Scotia, relating to a penalty incurred by him in consequence of violation of provisions of Section 2814 Revised Statutes of the United States. On this case I have respectfully to report that this vessel arrived and entered at this port under circumstances substantially as stated by Captain Ellis. The 'clearance' he alludes to has on its face the single word 'fish' as a description of cargo. Nowhere on 'clearance' is any reference made to kind, addition, quantity, by whom shipped, or to whom consigned. Very likely the discrepancy between his statement and the fact arises through an inadvertence on the part of the person he employed to draw up the statement. The Acting Boarding Officer at this port reported to me, through the Surveyor, under date of the 24th instant, that this vessel arrived at this port to-day, and the captain failed to produce a manifest of the cargo on board such schooner.

"In consequence of this the Master was informed on entry that he was liable to a penalty of 500 dollars for failure to produce a manifest upon his arrival within the limits of this collection district, as provided by Section 2814 Revised Statutes of the United States; that under an Article of Treasury Regulations, 1884, relating to Customs and Navigation Laws, the case would be submitted to the Secretary of the Treasury before enforcing the penalty. I believe the reasons he assigns for his failure to comply with the requirements of the Navigation Laws and Customs Regulations of the United States to be true. I have not discovered any attempt on his part to defraud the revenue. He presented a manifest in proper form on entry of his vessel, in which cargo was set up as taken on board at Farnsworth, Nova Scotia; contents, 20,000 fresh mackerel, shipped by W. A. Killian, and consigned to W. L. Clements and Co.; consignee's residence,

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Portland; and port of destination, Portland. In view of the fact that the morning papers of this city publish in full a statement of Captain Ellis, as herein inclosed, I deem it proper to say that the document was not furnished the press by an officer connected with the Customs Service at this port, to my knowledge. I respectfully submit the case, and await your instructions thereon."

Captain Ellis' statement, referred to in the above letter, has already been published.

Inclosure 4 in No. 72.

Sir L. West to the Marquis of Lansdowne.

My Lord,

Washington, May 31, 1886.

I HAVE the honour to inform your Excellency that the fine imposed on the Nova Scotia fishing schooner "Sisters," seized at Portland (Maine) for a violation of the Customs Regulations, has been remitted by the Acting Secretary of the Treasury. I inclose herewith an article from the "New York Herald" in connection therewith.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 5 in No. 72.

Extract from the "New York Herald" of May 31, 1886.

"ERRING SISTERS, GO IN PEACE."

MR. FAIRCHILD, the Acting Secretary to the Treasury, has remitted the fine to which the Nova Scotia fishing schooner "Sisters," which was seized at Portland last Monday, was liable for want of a manifest. The "Herald" anticipated this remission. On the morning after the seizure we expressed our confidence that the Treasury Department would temper justice with mercy as soon as it received an official certificate of the facts which our correspondent at Portland already had ascertained and reported to us. The skipper was just as devoid of evil intention as were the captains and crews of those fishing schooners from Gloucester and Portland which the Canadians have seized and are prosecuting not only unmercifully, but unjustly.

The difference between the conduct of the authorities on this side of the border and on the other side is a great one, and will not fail to be noticed wherever the fishery questions are discussed. No special merit, to be sure, attaches to our Treasury Department for its course in this case. It has done only what was to be expected of a civilized administration, and the Canadians have only themselves to blame for the contrast.

No. 73.

Sir L. West to the Earl of Rosebery.—(Received July 15.)

My Lord,

Washington, July 3, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a further note which I have received from the Secretary of State, reporting the detention of the American schooner "City Point," of Portland (Maine), by the authorities of Nova Scotia.

I have, &c.

(Signed) L. S. SACKVILLE WEST

Inclosure in No. 73.

Mr. Bayard to Sir L. West.

Sir, *Department of State, Washington, July 2, 1886.*
 IT is my unpleasant duty promptly to communicate to you the telegraphic Report to me by the United States' Consul-General at Halifax, that the schooner "City Point," of Portland, Maine, arrived at the port of Shelburne, Nova Scotia, landed two men, obtained water, and is detained by the authorities until further instructions are received from Ottawa. The case, as thus reported, is an infringement of the ordinary rights of international hospitality, and constitutes a violation of Treaty stipulations and commercial privileges, evincing such unfriendliness to the citizens of the United States as is greatly to be deplored, and which I hold it to be the responsible duty of the Government of Great Britain promptly to correct.

I have, &c.
 (Signed) T. F. BAYARD.

No. 74.

Mr. Phelps to the Earl of Rosebery.—(Received July 17.)

My Lord, *Legation of the United States, London, July 16, 1886.*
 I HAVE the honour to inclose herewith the copy of a telegram which I have just received from the Secretary of State, and to which I beg that your Lordship will give the earliest possible attention.

I have, &c.
 (Signed) E. J. PHELPS.

Inclosure in No. 74.

Mr. Bayard to Mr. Phelps.

(Telegraphic.) *(Received at the Legation, July 16, 1886.)*
 YOU will state to Lord Rosebery that, realizing fully any embarrassment or delays attendant upon pending changes of British Administration, it is our duty to call upon Imperial Government to put a stop to the unjust, arbitrary, and vexatious action of Canadian authorities towards our citizens engaged in open sea fishing and trading, but not violating or contemplating violation of any Law or Treaty. Our readiness, long since expressed, to endeavour to come to a just and fair joint interpretation of Treaty rights and commercial privileges, is ill met by persistent and unfriendly action of Canadian authorities, which is rapidly producing a most injurious and exasperating effect. I am without reply from British Minister, who is now absent.

No. 75.

Sir J. Pauncefote to Sir R. Herbert.

Sir, *Foreign Office, July 17, 1886.*
 I AM directed by the Earl of Rosebery to transmit to you a copy of a despatch from Her Majesty's Minister at Washington,* inclosing a copy of a note from Mr. Bayard, in which he protests against the detention of the American schooner "City Point" at Shelburne, Nova Scotia; and I am to request that Earl Granville will instruct the Marquis of Lansdowne, by telegraph, to send home a Report on the subject, if possible, by cable.

I am, &c.
 (Signed) JULIAN PAUNCEFOTE.

* No. 73.

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No. 76.

Mr. Hardinge to the Earl of Rosebery.—(Received July 23.)

My Lord,

Washington, July 12, 1886.

I HAVE the honour to transmit herewith to your Lordship copy of a note received to-day, from the Secretary of State, protesting against the action of the Canadian Customs authorities at Pictou, Nova Scotia, in denying to the steamship "Novelty," of the United States, the right to take in steam coal, purchase ice, or tranship fish in bond to the United States.

I have, &c.

(Signed)

CHARLES HARDINGE.

Inclosure in No. 76.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, July 10, 1886.

I HAVE the honour to inform you that I am in receipt of a Report from the Consul-General of the United States at Halifax, accompanied by sworn testimony, stating that the "Novelty," a duly registered merchant steam-vessel of the United States, has been denied the right to take in steam coal, or purchase ice, or tranship fish in bond to the United States, at Pictou, Nova Scotia.

It appears that, having reached that port on the 1st instant, and finding the Customs Office closed on account of a holiday, the master of the "Novelty" telegraphed to the Minister of Marine and Fisheries at Ottawa, asking if he would be permitted to do any of the three things mentioned above; that he received in reply a telegram reciting, with certain inaccurate and extended application, the language of Article I of the Treaty of 1818, the limitations upon the significance of which are impending discussion between the Government of the United States and that of Her Britannic Majesty; that on entering and clearing the "Novelty" on the following day at the Customs-house, the collector stated that his instructions were contained in the telegram the master had received; and that, the privilege of coaling being denied, the "Novelty" was compelled to leave Pictou without being allowed to obtain fuel necessary for her lawful voyage on a dangerous coast.

Against this treatment I make instant and formal protest, as an unwarranted interpretation and application of the Treaty by the officers of the Dominion of Canada and the Province of Nova Scotia, as an infraction of the laws of commercial and maritime intercourse existing between the two countries, and as a violation of hospitality, and for any loss or injury resulting therefrom the Government of Her Britannic Majesty will be held liable.

I have, &c.

(Signed)

T. F. BAYARD.

No. 77.

Mr. Hardinge to the Earl of Rosebery.—(Received July 23.)

My Lord,

Washington, July 12, 1886.

WITH reference to my preceding despatch of to-day, I have the honour to inclose to your Lordship herewith copy of a further note addressed by the Secretary of State to Sir L. West, protesting against the interference of the Dominion cruiser "Middleton" in preventing American boats from visiting St. Andrew's, New Brunswick, for the purpose of there purchasing herring for canning.

In reply, I have merely acknowledged the receipt of his note, and stated that I would acquaint your Lordship with his views on this subject.

I have also the honour to transmit to your Lordship an extract from the "National Republican" of to-day's date, giving the full text of Mr. Bayard's reply to Representative Boutelle of Maine, together with a statement made by the Captain of one of the American boats in question, whose masters complain of the violation of their commercial rights.

I have, &c.

(Signed)

CHARLES HARDINGE.

Inclosure 1 in No. 77.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, July 10, 1886.

ON the 2nd June last I had the honour to inform you that despatches from Eastport in Maine had been received, reporting threats by the Customs officials of the Dominion to seize American boats coming into those waters to purchase herring from the Canadian weirs for the purpose of canning the same as sardines, which would be a manifest infraction of the right of purchase and sale of herring caught and sold by Canadians in their own waters, in the pursuance of legitimate trade.

To this note I have not had the honour of a reply. To-day Mr. C. A. Boutelle, M.C., from Maine, informs me that American boats visiting St. Andrew's, New Brunswick, for the purpose of there purchasing herring from the Canadian weirs for canning, had been driven away by the Dominion cruiser "Middleton."

Such inhibition of usual and legitimate commercial contracts and intercourse is assuredly without warrant of law, and I draw your attention to it in order that the commercial rights of citizens of the United States may not be thus invaded and subjected to unfriendly discrimination, and I am, &c.

(Signed) T. F. BAYARD.

Inclosure 2 in No. 77.

Extract from the "National Republican" of July 12, 1886.

REPRESENTATIVE BOUTELLE, of Maine, has received the following reply to his request that the State Department give immediate attention to the statement telegraphed him from Eastport, that American boats were driven away from St. Andrew's, New Brunswick, on Friday by a Dominion cruiser:—

"Dear Sir,

"Department of State, July 10, 1886.

"I have just received your telegram of this date, stating that you had a despatch from Eastport, Maine, that American boats after herring for sardines at St. Andrew's, New Brunswick, were driven away by the Dominion cruiser "Middleton," with the announcement that no American boats will be allowed to take herring for any purpose; and to this you invoke the immediate attention of this Department.

"On the 2nd June last you called at this Department, in company with Senator Hale, of Maine, and then drew my attention to a similar threat of interference with the purchase of small herring for canning as sardines from the Canadian weirs. On the same day I made representation of the alleged threats to the British Minister at this capital, and drew his attention to the alleged violation of lawful commercial intercourse between British subjects in Canada and the citizens of the United States.

"I will assist materially in all such cases of alleged violation of commercial rights if accurate and full statements of all the facts in each case are procured and forwarded to this Department, accompanied by affidavits.

"A great deal of loose rumour and sensational statement would be thus disposed of, and a tangible basis be laid for claim for compensation by the injured parties.

(Signed) "I have, &c. T. F. BAYARD.

"Hon. C. A. Boutelle,

"House of Representatives."

Mr. Boutelle has telegraphed to Eastport requesting that full and accurate sworn statements of the interference complained of be prepared and forwarded at once to the Department of State.

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*Statement telegraphed to Washington.**Eastport, Maine, July 11.*

Captain Balkam, in charge of one of the American boats which were at St. Andrew's, New Brunswick, Friday night, and which were driven away by the Dominion cruiser "General Middleton," in command of Lieutenant Kent, makes the following statement: "I was lying in St. Andrew's Harbour waiting for the fishermen to seine their weirs, when the 'General Middleton' came into port. Lieutenant Kent, of the 'Middleton,' came on board my boat, and inquired if she was an American boat and if I was an American citizen. I told him I did not know whether my boat was American or not, but as for myself, I was an American citizen." "It makes no difference," he replied, "whether your boat is American or English, you have no right to purchase fish in this port, and if you do not leave, or if you attempt to buy fish, your boat will be seized." He also notified the other boatmen. Not wishing to have any trouble with the Dominion Government we all set sail, and blowing our fog horns in derision of the "General Middleton," who steered for the American shore. Collector Nutt has taken my statement and telegraphed to Washington.

No. 78.

The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, July 23, 1886.

I HAVE received your despatch of the 11th May last, inclosing a copy of a note addressed to you by Mr. Bayard, in which, whilst expressly referring to the seizure by the Canadian authorities of the American fishing-vessels "Joseph Story" and "David J. Adams," he discusses at length the present position of the North American Fisheries question.

I have also received a communication upon the same subject from the United States' Minister at this Court, dated the 2nd June last, which, although advancing arguments of a somewhat different character, is substantially addressed to the consideration of the same question.

I think it therefore desirable to reply to these two communications together in the present despatch, of which I shall hand a copy to Mr. Phelps.

The matter is one involving the gravest interests of Canada; and upon receipt of the communications above mentioned, I lost no time in requesting the Secretary of State for the Colonies to obtain from the Government of the Dominion an expression of their views thereon. I now inclose a copy of an approved Report of the Canadian Privy Council, in which the case of Canada is so fully set forth that I think it would be desirable, as a preliminary step to the further discussion of the questions involved in this controversy, to communicate a copy of it to Mr. Bayard, as representing the views of the Dominion Government; and I have to request that, in so doing, you will state that Her Majesty's Government will be glad to be favoured with any observations which Mr. Bayard may desire to make thereon.

In regard to those portions of Mr. Phelps' note of the 2nd June, in which he calls in question the competence of the Canadian authorities under existing Statutes, whether Imperial or Colonial, to effect seizures of United States' fishing-vessels under circumstances such as those which appear to have led to the capture of the "David J. Adams," I have to observe that Her Majesty's Government do not feel themselves at present in a position to discuss that question, which is now occupying the attention of the Courts of Law in the Dominion, and which may possibly form the subject of an appeal to the Judicial Committee of Her Majesty's Privy Council in England.

It is believed that the Courts in Canada will deliver Judgment in the above cases very shortly; and until the legal proceedings now pending have been brought to a conclusion, Her Majesty's Government do not feel justified in expressing an opinion upon them, either as to the facts or the legality of the action taken by the Colonial authorities.

I do not, therefore, conceive it to be at present necessary to make any specific reply to Mr. Bayard's further notes of the 11th and 12th May and 1st, 2nd, and 7th June last. But with regard to his note of the 20th May relative to the seizure of the United States' fishing-vessel "Jennie and Julia," I inclose, for communication to Mr. Bayard, a copy of a Report from the Canadian Minister of Marine and Fisheries, dealing with this case.

I cannot, however, close this despatch without adding that Her Majesty's Government entirely concur in that passage of the Report of the Canadian Privy Council, in which it is observed that "if the provisions of the Convention of 1818 have become inconvenient to either Contracting Party, the utmost that good-will and fair dealing can suggest is that the terms shall be reconsidered."

It is assuredly from no fault on the part of Her Majesty's Government that the question has now been relegated to the terms of the Convention of 1818. They have not ceased to express their anxiety to commence negotiations, and they are now prepared to enter upon a frank and friendly consideration of the whole question with the most earnest desire to arrive at a settlement consonant alike with the rights and interests of Canada and of the United States.

Where, as in the present case, conflicting interests are brought into antagonism by Treaty stipulations the strict interpretation of which has scarcely been called in question, the matter appears to Her Majesty's Government to be pre-eminently one for friendly negotiation.

I am, &c.
(Signed) ROSEBERRY.

Inclosure 1 in No. 78.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Governor-General on the 14th June, 1896.

THE Committee of the Privy Council have had under consideration a Report from the Minister of Marine and Fisheries upon the communications dated 10th and 20th May last from the Hon. Mr. Bayard, Secretary of State of the United States, to Her Majesty's Minister at Washington, in reference to the seizure of the American fishing-vessel "David J. Adams."

The Committee concur in the annexed Report, and they advise that your Excellency be moved to transmit a copy thereof to the Right Hon. the Secretary of State for the Colonies.

All of which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk, Privy Council, Canada.

The Undersigned having had his attention called by your Excellency to a communication from Mr. Bayard, Secretary of State of the United States, dated the 10th May, and addressed to Her Majesty's Minister at Washington, and to a further communication from Mr. Bayard, dated the 20th May instant, in reference to the seizure of the American fishing-vessel "David J. Adams," begs leave to submit the following observations thereon:—

Your Excellency's Government fully appreciates and reciprocates Mr. Bayard's desire that the administration of the laws regulating the commercial interests and the mercantile marine of the two countries might be such as to promote good feeling and mutual advantage.

Canada has given many indisputable proofs of an earnest desire to cultivate and extend her commercial relations with the United States, and it may not be without advantage to recapitulate some of those proofs.

For many years before 1854 the Maritime Provinces of British North America had complained to Her Majesty's Government of the continuous invasion of their inshore fisheries (sometimes accompanied, it was alleged, with violence) by American fishermen and fishing-vessels.

Much irritation naturally ensued, and it was felt to be expedient by both Governments to put an end to this unseemly state of things by Treaty, and at the same time to arrange for enlarged trade relations between the United States and the British North American Colonies. The Reciprocity Treaty of 1854 was the result, by which were not only our inshore fisheries opened to the Americans, but provision was made for the free interchange of the principal natural products of both countries, including those of the sea. Peace was preserved on our waters, and the volume of international trade steadily increased during the existence of this Treaty, and until it was terminated in 1866, not by Great Britain, but by the United States.

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and New Brunswick) was thrown back on the Convention of 1818, and obliged to fit out a Marine Police to enforce the laws and defend her rights, still desiring, however, to cultivate friendly relations with her great neighbour, and not too suddenly to deprive the American fishermen of their accustomed fishing grounds and means of livelihood. She readily acquiesced in the proposal of Her Majesty's Government for the temporary issue of annual licences to fish, on payment of a moderate fee. Your Excellency is aware of the failure of that scheme. A few licences were issued at first, but the applications for them soon ceased, and the American fishermen persisted in forcing themselves into our waters, "without leave or licence."

Then came the recurrence, in an aggravated form, of all the troubles which had occurred anterior to the Reciprocity Treaty. There were invasions of our waters, personal conflicts between our fishermen and American crews, the destruction of nets, the seizure and condemnation of vessels, and intense consequent irritation on both sides.

This was happily put an end to by the Washington Treaty of 1871. In the interval between the termination of the first Treaty and the ratification of that by which it was eventually replaced, Canada on several occasions pressed, without success, through the British Minister at Washington, for a renewal of the Reciprocity Treaty, or for the negotiation of another on a still wider basis.

When in 1874 Sir Edward Thornton, then British Minister at Washington, and the late Hon. George Brown, of Toronto, were appointed joint Plenipotentiaries for the purpose of negotiating and concluding a Treaty relating to fisheries, commerce, and navigation, a Provisional Treaty was arranged by them with the United States' Government, but the Senate decided that it was not expedient to ratify it, and the negotiation fell to the ground.

The Treaty of Washington, while it failed to restore the provisions of the Treaty of 1854, for reciprocal free trade (except in fish), at least kept the peace, and there was tranquillity along our shores until July 1885, when it was terminated again by the United States' Government and not by Great Britain.

With a desire to show that she wished to be a good neighbour, and in order to prevent loss and disappointment on the part of the United States' fishermen by their sudden exclusion from her waters in the middle of the fishing season, Canada continued to allow them for six months all the advantages which the rescinded Fishery Clauses had previously given them, although her people received from the United States none of the corresponding advantages which the Treaty of 1871 had declared to be an equivalent for the benefits secured thereby to the American fishermen.

The President, in return for this courtesy, promised to recommend to Congress the appointment of a Joint Commission by the two Governments of the United Kingdom and the United States to consider the Fishery question, with permission also to consider the whole state of the trade relations between the United States and Canada.

This promise was fulfilled by the President, but the Senate rejected his recommendation and refused to sanction the Commission.

Under these circumstances Canada, having exhausted every effort to procure an amicable arrangement, has been driven again to fall back upon the Convention of 1818, the provisions of which she is now enforcing and will enforce, in no punitive or hostile spirit as Mr. Bayard supposes, but solely in protection of her fisheries, and in vindication of the right secured to her by Treaty.

Mr. Bayard suggests that "the Treaty of 1818 was between two nations, the United States of America and Great Britain, who, as the Contracting Parties, can alone apply authoritative interpretation thereto, and enforce its provisions by appropriate legislation."

As it may be inferred from this statement that the right of the Parliament of Canada to make enactments for the protection of the fisheries of the Dominion, and the power of the Canadian officers to protect those fisheries, are questioned, it may be well to state at the outset the grounds upon which it is conceived by the Undersigned that the jurisdiction in question is clear beyond a doubt.

1. In the first place the Undersigned would ask it to be remembered that the extent of the jurisdiction of the Parliament of Canada is not limited (nor was that of the provinces before the Union) to the sea coast, but extends for 3 marine miles from the shore as to all matters over which any legislative authority can in any country be exercised within that space. The legislation which has been adopted on this subject by the Parliament of Canada (and previously to confederation by the provinces) does not reach beyond that limit. It may be assumed that, in the absence of any Treaty stipulation to the contrary, this right is so well recognized and established by both British and American law that the grounds on which it is supported need not be stated

ere at large, the Undersigned will merely add, therefore, to this statement of the position, that so far from the right being limited by the Convention of 1818, that Convention expressly recognizes it.

After renouncing the liberty to "take, cure, or dry fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Majesty's dominions in America," there is a stipulation that while American fishing-vessels shall be admitted to enter such bays, &c., "for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, they shall be under such restrictions as may be necessary to prevent their taking, curing, or drying fish therein, or in any other manner whatever abusing the privileges reserved to them."

2. Appropriate legislation on this subject was, in the first instance, adopted by the Parliament of the United Kingdom. The Imperial Statute 59 Geo. III, cap. 38, was enacted in the year following the Convention, in order to give that Convention force and effect. That Statute declared that, except for the purposes before specified, it should "not be lawful for any person or persons, not being a natural born subject of His Majesty, in any foreign ship, vessel, or boat, nor for any person in any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry, or cure any fish of any kind whatever within 3 marine miles of any coasts, bays, creeks, or harbours whatever, in any part of His Majesty's dominions in America, not included within the limits specified and described in the 1st Article of the said Convention, and that if such foreign ship, vessel, or boat, or any person or persons on board thereof shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbours within such parts of His Majesty's dominions in America, out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned by such and the like ways, means, and methods, and in the same Courts as ships, vessels, or boats may be forfeited, seized, prosecuted, and condemned for any offence against any laws relating to the Revenue of Customs, or the laws of trade and navigation, under any Act or Acts of the Parliament of Great Britain or the United Kingdom of Great Britain and Ireland, provided that nothing contained in this Act shall apply or be construed to apply to the ships or subjects of any Prince, Power, or State in amity with His Majesty who are entitled by Treaty with His Majesty to any privileges of taking, drying, or curing fish on the coasts, bays, creeks, or harbours, or within the limits in this Act described. Provided always, that it shall and may be lawful for any fishermen of the said United States to enter into any such bays or harbours of His Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever, abusing the said privileges by the said Treaty, and this Act reserved to them, and as shall, for that purpose, be imposed by any order or orders to be from time to time made by His Majesty in Council under the authority of this Act, and by any Regulations which shall be issued by the Governor or person exercising the office of Governor in any such parts of His Majesty's dominions in America, under or in pursuance of any such order in Council as aforesaid.

"And that if any person or persons upon requisition made by the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor in person exercising the office of Governor in any other parts of His Majesty's dominions in America, as aforesaid, or by any officer or officers acting under such Governor or person exercising the office of Governor, in the execution of any orders or instructions from His Majesty in Council, shall refuse to depart from such bays or harbours, or if any person or persons shall refuse, or neglect to conform to any Regulations or directions which shall be made or given for the execution of any of the purposes of this Act, every such person so refusing or otherwise offending against this Act shall forfeit the sum of two hundred pounds, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the Colony or Settlement within or near to which such offence shall be committed, or by Bill, plaint, or information in any of His Majesty's Courts of Record at Westminster, one moiety of such penalty to belong to His Majesty, his heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute for the same."

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The Acts passed by the provinces now forming Canada, and also by the Parliament of Canada (now noted in the margin)* are to the same effect, and may be said to be merely declaratory of the law as established by the Imperial Statute.

3. The authority of the Legislatures of the provinces, and after confederation the authority of the Parliament of Canada, to make enactments to enforce the provisions of the Convention, as well as the authority of Canadian officers to enforce those Acts, rests on well-known Constitutional principles.

Those Legislatures existed, and the Parliament of Canada now exists, by the authority of the Parliament of the United Kingdom of Great Britain and Ireland, which is one of the nations referred to by Mr. Bayard as the "Contracting Parties." The Colonial Statutes have received the sanction of the British Sovereign who, and not the nation, is actually the party with whom the United States made the Convention. The officers who are engaged in enforcing the Acts of Canada or the laws of the Empire, are Her Majesty's officers, whether their authority emanates directly from the Queen, or from her Representative, the Governor-General. The jurisdiction thus exercised cannot therefore be properly described in the language used by Mr. Bayard as a supposed and therefore questionable delegation of jurisdiction by the Imperial Government of Great Britain. Her Majesty governs in Canada as well as in Great Britain; the officers of Canada are her officers; the Statutes of Canada are her Statutes, passed on the advice of her Parliament sitting in Canada.

It is, therefore, an error to conceive that because the United States and Great Britain were, in the first instance, the Contracting Parties to the Treaty of 1818, no question arising under that Treaty can be "responsibly dealt with," either by the Parliament, or by the authorities of the Dominion.

The raising of this objection now is the more remarkable, as the Government of the United States has long been aware of the necessity of reference to the Colonial Legislatures in matters affecting their interests.

The Treaties of 1854 and 1871 expressly provide that, so far as they concerned the fisheries or trade relations with the provinces, they should be subject to ratification by their several Legislatures; and seizures of American vessels and goods, followed by condemnation for breach of the Provincial Customs Laws, have been made for forty years without protest or objection on the part of the United States' Government.

The Undersigned, with regard to this contention of Mr Bayard, has further to observe that in the proceedings which have recently been taken for the protection of the fisheries, no attempt has been made to put any special or novel interpretation on the Convention of 1818. The seizures of the fishing-vessels have been made in order to enforce the explicit provisions of that Treaty, the clear and long-established provisions of the Imperial Statute and of the Statutes of Canada expressed in almost the same language.

The proceedings which have been taken to carry out the law of the Empire in the present case are the same as those which have been taken from time to time during the period in which the Convention has been in force, and the seizures of vessels have been made under process of the Imperial Court of Vice-Admiralty established in the provinces of Canada.

Mr. Bayard further observes that since the Treaty of 1818, "a series of Laws and Regulations affecting the trade between the North American provinces and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants," and that "the independent and yet concurrent action of the two Governments has effected a gradual extension from time to time of the provisions of Article I of the Convention of the 3rd July, 1815, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the limits of that Treaty."

The Undersigned has not been able to discover, in the instances given by Mr. Bayard, any evidence that the Laws and Regulations affecting the trade between the British North American provinces and the United States, or that, "the independent and yet concurrent action of the two Governments" have either extended or restricted the terms of the Convention of 1818, or affected in any way the right to enforce its provisions according to the plain meaning of the Articles of the Treaty; on the contrary, a reference to the XVIIIth Article of the Washington Treaty will show that the

* Dominion Acts, 31 Vict., cap. 6; 33 Vict., cap. 16; now incorporated in Revised Statutes of 1886, cap. 90. Nova Scotia Acts, Revised Statutes, 3rd series, cap. 94, 23 Vict. (1866), cap. 35. New Brunswick Acts, 16 Vict. (1853), cap. 69. Prince Edward Island Act, 6 Vict. (1843), cap. 14.

Contracting Parties made the Convention the basis of the further privileges granted by the Treaty, and it does not allege that its provisions are in any way extended or affected by subsequent legislation or Acts of Administration.

Mr. Bayard has referred to the Proclamation of President Jackson in 1830, creating "reciprocal commercial intercourse on terms of perfect equality of flag" between the United States and the British American dependencies, and has suggested that these "commercial privileges have since received a large extension, and that in some cases 'favours' have been granted by the United States without equivalent 'concession,' such as the exemption granted by the Shipping Act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from British North America and West Indies entering ports of the United States."

He has also mentioned under this head "the arrangement for the transit of goods, and the remission by Proclamation as to certain British ports and places of the remainder of the tonnage tax on evidence of equal treatment being shown" to United States' vessels.

The Proclamation of President Jackson in 1830 had no relation to the subject of the fisheries, and merely had the effect of opening United States' ports to British vessels on terms similar to those which had already been granted in British ports to vessels of the United States. The object of these "Laws and Regulations" mentioned by Mr. Bayard was purely of a commercial character, while the sole purpose of the Convention of 1818 was to establish and define the rights of the citizens of the two countries in relation to the fisheries on the British North American coast.

Bearing this distinction in mind, however, it may be conceded that substantial assistance has been given to the development of commercial intercourse between the two countries.

But legislation in that direction has not been confined to the Government of the United States, as indeed Mr. Bayard has admitted in referring to the case of the Imperial Shipping and Navigation Act of 1849.

For upwards of forty years, as has already been stated, Canada has continued to evince her desire for a free exchange of the chief products of the two countries. She has repeatedly urged the desirability of the fuller reciprocity of trade which was established during the period in which the Treaty of 1854 was in force.

The laws of Canada with regard to the registry of vessels, tonnage dues, and shipping generally, are more liberal than those of the United States. The ports of Canada in inland waters are free to vessels of the United States, which are admitted to the use of her canals on equal terms with Canadian vessels.

Canada allows free registry to ships built in the United States and purchased by British citizens, charges no tonnage or light dues on United States' shipping, and extends a standing invitation for a large measure of reciprocity in trade by her tariff legislation.

Whatever relevancy, therefore, the argument may have to the subject under consideration, the Undersigned submits that the concessions which Mr. Bayard refers to as "favours" granted by United States can hardly be said not to have been met by equivalent concessions on the part of the Dominion, and inasmuch as the disposition of Canada continues to be the same, as was evinced in the friendly legislation just referred to, it would seem that Mr. Bayard's charges of showing "hostility to commerce under the guise of protection to inshore fisheries," or of interrupting ordinary commercial intercourse by harsh measures and unfriendly administration, is hardly justified.

The questions which were in controversy between Great Britain and the United States prior to 1818 related not to shipping and commerce, but to the claims of United States' fishermen to fish in waters adjacent to the British North American provinces.

Those questions were definitely settled by the Convention of that year, and although the terms of that Convention have since been twice suspended, first by the Treaty of 1854, and subsequently by that of 1871, after the lapse of each of these two Treaties the provision made in 1818 came again into operation, and were carried out by the Imperial and colonial authorities without the slightest doubt being raised as to their being in full force and vigour.

Mr. Bayard's contention that the effect of the legislation which has taken place under the Convention of 1818, and of Executive action thereunder, would be "to expand the restrictions and renunciations of that Treaty which related solely to the inshore fishing within the 3-mile limit, so as to affect the deep-sea fisheries," and "to diminish and practically destroy the privileges expressly secured to American fishing-

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vessels to visit these inshore waters for the objects of shelter and repair of damages, and purchasing wood and obtaining water," appears to the Undersigned to be unfounded. The legislation referred to in no way affects those privileges, nor has the Government of Canada taken any action towards their restriction. In the cases of the recent seizures, which are the immediate subject of Mr. Bayard's letter, the vessel seized had not resorted to Canadian waters for any one of the purposes specified in the Convention of 1818 as lawful. They were United States' fishing-vessels, and, against the plain terms of the Convention, had entered Canadian harbours. In doing so the "David J. Adams" was not even possessed of a permit "to touch and trade," even if such a document could be supposed to divest her of the character of a fishing-vessel.

The Undersigned is of opinion that while, for the reasons which he has advanced, there is no evidence to show that the Government of Canada has sought to expand the scope of the Convention of 1818 or to increase the extent of its restrictions, it would not be difficult to prove that the construction which the United States seeks to place on that Convention would have the effect of extending very largely the privileges which their citizens enjoy under its terms. The contention that the changes which may from time to time occur in the habits of the fish taken off our coasts, or in the methods of taking them, should be regarded as justifying a periodical revision of the terms of the Treaty, or a new interpretation of its provisions, cannot be acceded to. Such changes may from time to time render the conditions of the contract inconvenient to one party or the other, but the validity of the agreement can hardly be said to depend on the convenience or inconvenience which it imposes from time to time on one or other of the Contracting Parties. When the operation of its provisions can be shown to have become manifestly inequitable, the utmost that good-will and fair-dealing can suggest is that the terms should be reconsidered and a new arrangement entered into; but this the Government of the United States does not appear to have considered desirable.

It is not, however, the case that the Convention of 1818 affected only the inshore fisheries of the British provinces; it was framed with the object of affording a complete and exclusive definition of the rights and liberties which the fishermen of the United States were thenceforward to enjoy in following their vocation, so far as those rights could be affected by facilities for access to the shores or waters of the British provinces, or for intercourse with their people. It is therefore no undue expansion of the scope of that Convention to interpret strictly those of its provisions by which such access is denied, except to vessels requiring it for the purposes specifically described.

Such an undue expansion would, upon the other hand, certainly take place, if, under cover of its provisions, or of any agreements relating to general commercial intercourse which may have since been made, permission were accorded to United States' fishermen to resort habitually to the harbours of the Dominion, not for the sake of seeking safety for their vessels or of avoiding risk to human life, but in order to use those harbours as a general base of operations from which to prosecute and organize with greater advantage to themselves the industry in which they are engaged.

It was in order to guard against such an abuse of the provisions of the Treaty that amongst them was included the stipulation that not only should the inshore fisheries be reserved to British fishermen, but that the United States should renounce the right of their fishermen to enter the bays or harbours excepting for the four specified purposes, which do not include the purchase of bait or other appliances, whether intended for the deep-sea fisheries or not.

The Undersigned, therefore, cannot concur in Mr. Bayard's contention that "to prevent the purchase of bait, or any other supply needed for deep-sea fishing, would be to expand the Convention to objects wholly beyond the purview, scope, and intent of the Treaty, and to give to it an effect never contemplated."

Mr. Bayard suggests that the possession by a fishing-vessel of a permit to "touch and trade" should give her a right to enter Canadian ports for other than the purposes named in the Treaty, or, in other words, should give her perfect immunity from its provisions. This would amount to a practical repeal of the Treaty, because it would enable a United States' Collector of Customs, by issuing a licence, originally only intended for purposes of domestic Customs regulation, to give exemption from the Treaty to every United States' fishing-vessel. The observation that similar vessels under the British flag have the right to enter the ports of the United States for the purchase of supplies loses its force when it is remembered that the Convention of 1818 contained no restrictions on British vessels, and no renunciation of any privileges in regard to them.

Mr. Bayard states that in the proceedings prior to the Treaty of 1818 the British Commissioners proposed that United States' fishing-vessels should be excluded "from

carrying also merchandize," but that this proposition, "being resisted by the American negotiators, was abandoned," and goes on to say, "this fact would seem clearly to indicate that the business of fishing did not then, and does not now, disqualify vessels from also trading in the regular ports of entry." A reference to the proceedings alluded to will show that the proposition mentioned related only to United States' vessels visiting those portions of the coast of Labrador and Newfoundland on which the United States' fishermen had been granted the right to fish, and to land for drying and curing fish, and the rejection of the proposal can, at the utmost, be supposed only to indicate that the liberty to carry merchandize might exist without objection in relation to those coasts, and is no ground for supposing that the right extends to the regular ports of entry, against the express words of the Treaty.

The proposition of the British negotiators was to append to Article I the following words, "It is, therefore, well understood that the liberty of taking, drying, and curing fish, granted in the preceding part of this Article, shall not be construed to extend to any privilege of carrying on trade with any of His Britannic Majesty's subjects residing within the limits hereinbefore assigned for the use of the fishermen of the United States."

It was also proposed to limit them to having on board such goods as might "be necessary for the prosecution of the fishery or the support of the fishermen while engaged therein, or in the prosecution of their voyages to and from the fishing grounds."

To this the American negotiators objected on the ground that the search for contraband goods, and the liability to seizure for having them in possession, would expose the fishermen to endless vexation, and, in consequence, the proposal was abandoned. It is apparent, therefore, that this proviso in no way referred to the bays or harbours outside of the limits assigned to the American fishermen, from which bays and harbours it was agreed, both before and after this proposition was discussed, that United States' fishing-vessels were to be excluded for all purposes other than for shelter and repairs, and purchasing wood and obtaining water.

If, however, weight is to be given to Mr. Bayard's argument that the rejection of a proposition advanced by either side during the course of the negotiations should be held to necessitate an interpretation adverse to the tenor of such proposition, that argument may certainly be used to prove that American fishing-vessels were not intended to have the right to enter Canadian waters for bait to be used even in the prosecution of the deep-sea fisheries. The United States' negotiators in 1818 made the proposition that the words "and bait" be added to the enumeration of the objects for which these fishermen might be allowed to enter, and the proviso as first submitted had read "provided, however, that American fishermen shall be permitted to enter such bays and harbours for the purpose only of obtaining shelter, wood, water, and bait." The addition of the two last words was, however, resisted by the British Plenipotentiaries, and their omission acquiesced in by their American colleagues. It is, moreover, to be observed that this proposition could only have had reference to the deep-sea fishing, because the inshore fisheries had already been specifically renounced by the Representatives of the United States.

In addition to this evidence, it must be remembered that the United States' Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the Convention of 1818 nor the Treaty of Washington conferred any right or privilege of trading on American fishermen. The British case claimed compensation for the privilege which had been given since the ratification of the latter Treaty to United States' fishing-vessels "to transfer cargoes, to outfit vessels, buy supplies, obtain ice, engage sailors, procure bait, and traffic generally in British ports and harbours."

This claim was, however, successfully resisted, and in the United States' case it is maintained "that the various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enactment of former oppressive Statutes. Moreover, the Treaty does not provide for any possible compensation for such privileges."

Now, the existing laws referred to in this extract are the various Statutes passed by the Imperial and Colonial Legislatures to give effect to the Treaty of 1818, which, it is admitted in the said case, could at any time have been enforced (even during the existence of the Washington Treaty), if the Canadian authorities had chosen to do so.

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Mr. Bayard on more than one occasion intimates that the interpretation of the Treaty and its enforcement are dictated by local and hostile feelings, and that the main question is being "obscured by partizan advocacy and distorted by the heat of local interests," and, in conclusion, expresses a hope that "ordinary commercial intercourse shall not be interrupted by harsh measures and unfriendly administration."

The Undersigned desires emphatically to state that it is not the wish of the Government or the people of Canada to interrupt for a moment the most friendly and free commercial intercourse with the neighbouring Republic.

The mercantile vessels and the commerce of the United States have at present exactly the same freedom that they have for years passed enjoyed in Canada, and the disposition of the Canadian Government is to extend reciprocal trade with the United States beyond its present limits, nor can it be admitted that the charge of local prejudice or hostile feeling is justified by the calm enforcement, through the legal Tribunals of the country, of the plain terms of a Treaty between Great Britain and the United States, and of the Statutes which have been in operation for nearly seventy years, excepting in intervals during which (until put an end to by the United States' Government) special and more liberal provisions existed in relation to the commerce and fisheries of the two countries.

The Undersigned has further to call attention to the letter of Mr. Bayard of the 20th May, relating also to the seizure of the "David J. Adams" in the Port of Digby, Nova Scotia.

That vessel was seized, as has been explained on a previous occasion, by the Commander of the Canadian steamer "Lansdowne," under the following circumstances:

She was a United States' fishing-vessel, and entered the harbour of Digby for purposes other than those for which entry is permitted by the Treaty and by the Imperial and Canadian Statutes.

As soon as practicable, legal process was obtained from the Vice-Admiralty Court at Halifax, and the vessel was delivered to the Officer of that Court. The paper referred to in Mr. Bayard's letter as having been nailed to her mast, was doubtless a copy of the warrant which commanded the Marshal or his deputy to make the arrest.

The Undersigned is informed that there was no intention whatever of so adjusting the paper that its contents could not be read, but it is doubtless correct that the officer of the Court in charge declined to allow the document to be removed. Both the United States' Consul-General and the Captain of the "David J. Adams" were made acquainted with the reasons for the seizure, and the only ground for the statement that a respectful application to ascertain the nature of the complaint was fruitless, was, that the Commander of the "Lansdowne," after the nature of the complaint had been stated to those concerned and was published, and had become notorious to the people of both countries, declined to give the United States' Consul-General a specific and precise statement of the charges upon which the vessel would be proceeded against, but referred him to his superior.

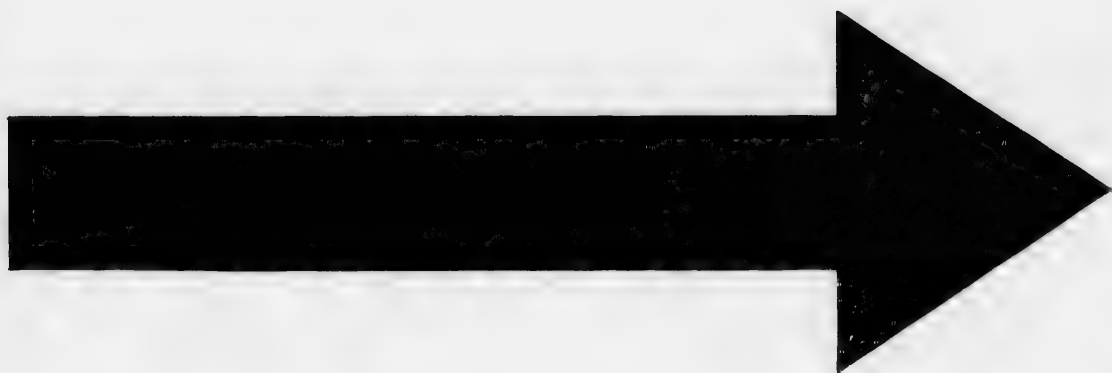
Such conduct on the part of the officer of the "Lansdowne" can hardly be said to have been extraordinary under the present circumstances.

The legal proceedings had at that time been commenced in the Court of Vice-Admiralty at Halifax, where the United States' Consul-General resides, and the officer at Digby could not have stated with precision, as he was called upon to do, the grounds on which the intervention of the Court had been claimed in the proceedings therein.

There was not, in this instance, the slightest difficulty in the United States' Consul-General and those interested in the vessel obtaining the fullest information, and no information which could have been given by those to whom they applied was withheld.

Apart from the general knowledge of the offences which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the Registry of the Court, and from the Solicitors of the Crown, and would have been furnished immediately on application to the authority to whom the Commander of the "Lansdowne" requested the United States' Consul-General to apply. No such information could have been obtained from the paper attached to the vessel's mast.

Instructions have, however, been given to the Commander of the "Lansdowne," and other officers of the Marine Police, that, in the event of any further seizures, a statement in writing shall be given to the master of the seized vessel of the offences for which the vessel may be detained, and that a copy thereof shall be sent to the United States' Consul-General at Halifax, and to the nearest United States' Consular Agent, and there can be no objection to the Solicitor for the Crown being



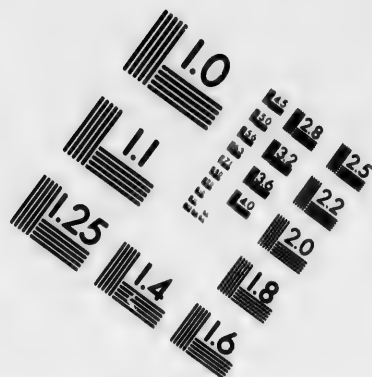
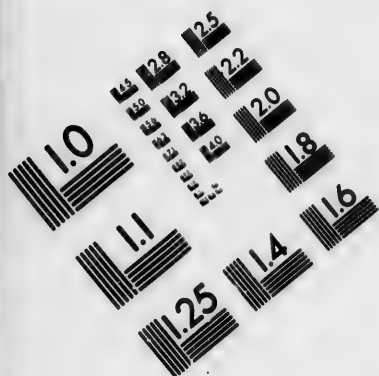
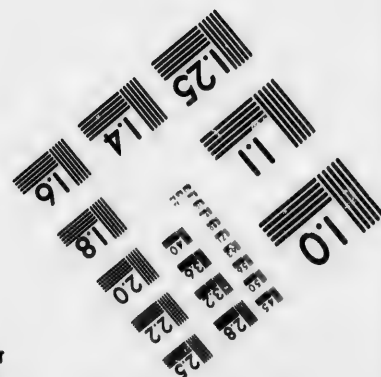
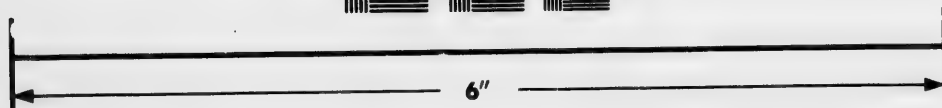
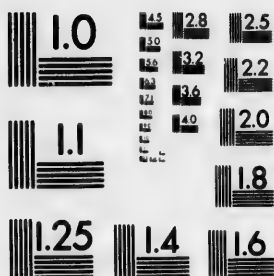


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instructed likewise to furnish the Consul-General with a copy of the legal process in each case, if it can be supposed that any fuller information will thereby be given.

Mr. Bayard is correct in his statement of the reasons for which the "David J. Adams" was seized and is now held. It is claimed that that vessel violated the Treaty of 1818, and, consequently, the Statutes which exist for the enforcement of that Treaty, and it is also claimed that she violated the Customs Laws of Canada of 1883.

The Undersigned recommends that copies of those Statutes be furnished for the information of Mr. Bayard.

Mr. Bayard has, in the same despatch, recalled the attention of Her Majesty's Minister to the correspondence and action which took place in the year 1870, when the Fishery question was under consideration, and especially to the instructions from the Lords of the Admiralty to Vice-Admiral Wellesley, in which that officer was directed to observe great caution in the arrest of American fishermen, and to confine his action to one class of offences against the Treaty. Mr. Bayard, however, appears to have attached unwarranted importance to the correspondence and instructions of 1870, when he refers to them as implying "an understanding between the two Governments," an understanding which should, in his opinion, at other times, and under other circumstances, govern the conduct of the authorities, whether Imperial or Colonial, to whom under the laws of the Empire is committed the duty of enforcing the Treaty in question.

When, therefore, Mr. Bayard points out the "absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the Treaty of 1818" to the conditions specified under those instructions, it is necessary to recall the fact that in the year 1870 the principal cause of complaint on the part of Canadian fishermen was that the American vessels were trespassing on the inshore fishing grounds and interfering with the catch of mackerel in Canadian waters, the purchase of bait being then a matter of secondary importance.

It is probable, too, that the action of the Imperial Government was influenced very largely by the prospect which then existed of an arrangement such as was accomplished in the following year by the Treaty of Washington, and that it may be inferred, in view of this disposition made apparent on both sides to arrive at such an understanding, that the Imperial authorities, without any surrender of Imperial or Colonial rights, and without acquiescing in any limited construction of the Treaty, instructed the Vice-Admiral to confine his seizures to the more open and injurious class of offences which were especially likely to be brought within the cognizance of the naval officers of the Imperial Service.

The Canadian Government, as has been already stated, for six months left its fishing grounds open to American fishermen, without any corresponding advantage in return, in order to prevent loss to those fishermen, and to afford time for the action of Congress, on the President's recommendation that a Joint Commission should be appointed to consider the whole question relating to the fisheries.

That recommendation has been rejected by Congress. Canadian fish is by prohibitory duties excluded from the United States' market. The American fishermen clamour against the removal of those duties, and, in order to maintain a monopoly of the trade, continue against all law to force themselves into our waters and harbours, and make our shores their base for supplies, especially for bait, which is necessary to the successful prosecution of their business.

They hope by this course to supply the demand for their home market, and thus to make Canada indirectly the means of injuring her own trade.

It is surely, therefore, not unreasonable that Canada should insist on the rights secured to her by Treaty. She is simply acting on the defensive, and no trouble can arise between the two countries if American fishermen will only recognize the provisions of the Convention of 1818 as obligatory upon them, and until a new arrangement is made, abstain both from fishing in her waters and from visiting her bays and harbours for any purposes save those specified in the Treaty.

In conclusion, the Undersigned would express the hope that the discussion which has arisen on this question may lead to renewed negotiations between Great Britain and the United States, and may have the result of establishing extended trade relations between the Republic and Canada, and of removing all sources of irritation between the two countries.

(Signed)

GEORGE E. FOSTER,

Minister of Marine and Fisheries.

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Inclosure 2 in No. 78.

Report.

WITH reference to a despatch from the British Minister at Washington, to his Excellency the Governor-General, dated the 21st May last, and inclosing a letter from Mr. Secretary Bayard, regarding the refusal of the Collector of Customs at Digby, Nova Scotia, to allow the United States' schooner "Jennie and Julia" the right of exercising commercial privileges at the said port, the Undersigned has the honour to make the following observations:—

It appears the "Jennie and Julia" is a vessel of about 14 tons register, that she was to all intents and purposes a fishing-vessel, and, at the time of her entry into the Port of Digby, had fishing gear and apparatus on board, and that the Collector fully satisfied himself of these facts. According to the master's declaration, she was there to purchase fresh herring only, and wished to get them direct from the weir fishermen. The Collector acted upon his conviction that she was a fishing-vessel, and as such, debarred by the Treaty of 1818 from entering Canadian ports for the purposes of trade. He, therefore, in the exercise of his plain duty, warned her off.

The Treaty of 1818 is explicit in its terms, and by it United States' fishing-vessels are allowed to enter Canadian ports for shelter, repairs, wood, and water, and "for no other purpose whatever."

The Undersigned is of the opinion that it cannot be successfully contended that a *bond fide* fishing-vessel can, by simply declaring her intention of purchasing fresh fish for other than baiting purposes, evade the provisions of the Treaty of 1818 and obtain privileges not contemplated thereby. If that were admitted, the provision of the Treaty which excludes United States' fishing-vessels for all purposes but the four above mentioned, would be rendered null and void, and the whole United States' fishing fleet be at once lifted out of the category of fishing-vessels, and allowed the free use of Canadian ports for baiting, obtaining supplies, and transshipping cargoes.

It appears to the Undersigned that the question as to whether a vessel is a fishing-vessel or a legitimate trader or merchant-vessel, is one of fact and to be decided by the character of the vessel and the nature of her outfit, and that the class to which she belongs is not to be determined by the simple declaration of her master that he is not at any given time acting in the character of a fisherman.

At the same time, the Undersigned begs again to observe that Canada has no desire to interrupt the long-established and legitimate commercial intercourse with the United States, but rather to encourage and maintain it, and that Canadian ports are at present open to the whole merchant navy of the United States on the same liberal conditions as heretofore accorded.

The whole respectfully submitted,

(Signed)

GEORGE E. FOSTER,

Minister of Marine and Fisheries.

Ottawa, June 5, 1886.

No. 79.

The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, July 23, 1886.

I HAVE to acknowledge the receipt of your despatch of the 30th May last, inclosing a copy of a note from Mr. Bayard, in which he protests against the provisions of a Bill recently introduced into the Canadian Parliament for the purpose of regulating fishing operations by foreign vessels in Canadian waters.

In reply I inclose an extract of a despatch from the Governor-General of Canada, containing observations on the subject.

I have to add that Her Majesty's Government entirely concur in the views expressed by the Marquis of Lansdowne in this extract, of which you will communicate a copy to Mr. Bayard, together with a copy of the present despatch.

With regard to Mr. Bayard's observations in the same note respecting a Customs Circular and a Warning issued by the Canadian authorities, and dated respectively the 7th May and the 5th March last, I have to acquaint you that these documents have now been amended so as to bring them into exact accordance with Treaty stipulations; and I

inclose, for communication to the United States' Government, printed copies of these documents as amended.

I am, &c.
(Signed) ROSEBERRY.

Inclosure 1 in No. 79.

The Marquis of Lansdowne to Earl Granville.

(Extract.)

Citadel, Quebec, June 7, 1886.

HER Majesty's Minister at Washington has been good enough to communicate to me, for my information, copy of a note received by him from the Secretary of State of the United States, in which the Bill is criticised, not so much on account of its policy, or because its introduction is regarded as inopportune and inconvenient, as upon the ground that any legislation by the Parliament of the Dominion for the purpose of interpreting and giving effect to a contract entered into by the Imperial Government is beyond the competence of that Parliament, and "an assumption of jurisdiction entirely unwarranted," and therefore "wholly denied by the United States."

Your Lordship is no doubt aware that legislation of this kind has been frequently resorted to by the Parliament of the Dominion, for the purpose of enforcing Treaties or Conventions entered into by the Imperial Government. In the present case the legislation proposed was introduced, not with the object of making a change in the terms of the Convention of 1818, nor with the intention of representing as breaches of the Convention any acts which are not now punishable as breaches of it. What the framers of the Bill sought was merely to amend the procedure by which the Convention is enforced, and to do this by attaching a particular penalty to a particular breach of the Convention after that breach had been proved before a competent Tribunal. It must be remembered that the Convention itself is silent as to the procedure to be taken in enforcing it, and that effect has accordingly been given to its provisions at different times both through the means of Acts passed, on the one side, by Congress, and, on the other, by the Imperial Parliament, as well as by the Legislatures of the British North American provinces previous to confederation, and since confederation by the Parliament of the Dominion. The right of the Dominion Parliament to legislate for these purposes, and the validity of such legislation as against the citizens of a foreign country has, as far as I am aware, not been seriously called in question. Such legislation, unless it is disallowed by the Imperial Government, becomes part of the law of the Empire.

The Government of the United States has long been aware of the necessity of reference to the Dominion Parliament in matters affecting Canadian interests, and has, I believe, never raised any objection to such reference. The Treaties of 1854 and 1871, so far as they related to the fisheries or to the commercial relations of the Dominion, were made subject to ratification by her Legislature. In the same way the Treaty under which fugitive criminals from the United States into Canada are surrendered, is carried into effect by means of a Canadian Statute. If a foreigner commits a murder in Canada he is tried, convicted, and executed by virtue of a Canadian, and not of an Imperial Act of Parliament. Seizures of goods and vessels for breaches of the local Customs law have in like manner been made for many years past without any protest, on the ground that such laws involved an usurpation of power by the Colony.

Mr. Bayard's statement that the Dominion Government is seeking by its action in this matter to "invade and destroy the commercial rights and privileges secured to citizens of the United States under and by virtue of Treaty stipulations with Great Britain," is not warranted by the facts of the case. No attempt has been made either by the authorities intrusted with the enforcement of the existing law, or by the Parliament of the Dominion to interfere with vessels engaged in *bond fide* commercial transactions upon the coast of the Dominion. The two vessels which have been seized are both of them, beyond all question, fishing-vessels and not traders, and therefore liable, subject to the finding of the Courts, to any penalties imposed by law for the enforcement of the Convention of 1818 on parties violating the terms of that Convention.

When, therefore, Mr. Bayard protests against all such proceedings as being "flagrantly violative of reciprocal commercial privileges to which citizens of the United States are lawfully entitled under Statutes of Great Britain, and the well defined and publicly proclaimed authority of both countries," and when he denies the competence of the Fishery Department to issue, under the Convention of 1818, such a paper as the "Warning," dated the 5th March, 1886, of which a copy has been supplied to your Lord-

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ship, he is in effect denying to the Dominion the right of taking any steps for the protection of its own rights secured under the Convention referred to.

Inclosure 2 in No. 79.

Warning.

To all to whom it may concern.

THE Government of the United States having by notice terminated Articles XVIII to XXV, both inclusive, and Article XXX, known as the Fishery Articles of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London on the 20th October, 1818:—

"Article I. Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement, for such purpose, with the inhabitants, proprietors, or possessors of the ground.

"And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any manner whatever abusing the privileges hereby reserved to them."

Attention is called to the following provisions of the Act of Parliament of Canada, cap. 61, of the Acts of 1868, intitled "An Act respecting fishing by foreign vessels."

"2. Any commissioned officer of Her Majesty's navy, serving on board of any vessels of Her Majesty's navy cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, Fishery Officer, or Stipendiary Magistrate on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, Sheriff, Magistrate or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat within any harbour in Canada, or hovering (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, and stay on board so long as she may remain within such place or distance.

"3. If such ship, vessel, or boat be bound elsewhere, and shall continue within such harbour, or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel, or boat into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit 400 dollars; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing or preparing to fish, or to have been fishing (in British waters)

within 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the period named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.

"4. All goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the 2nd section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit 500 dollars, and shall be guilty of a misdemeanour, and, upon conviction, be liable to imprisonment for a term not exceeding two years."

Of all of which you will take notice and govern yourself accordingly.

(Signed)

GEORGE E. FOSTER,

Department of Fisheries,
Ottawa, March 5, 1886.

Minister of Marine and Fisheries.

Inclosure 3 in No. 79.

Circular No. 371.

Sir,

Customs Department, Ottawa, May 7, 1886.

THE Government of the United States having by notice terminated Articles XVIII to XXV, both inclusive, and Article XXX, known as the Fishery Articles of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London on the 20th October, 1818:—

"Article 1st. Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramcau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground.

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any manner whatever abusing the privileges hereby reserved to them.

"Attention is also called to the following provisions of the Act of the Parliament of Canada, cap. 61, of the Acts of 1868, intituled, 'An Act respecting fishing by foreign vessels.'

"And. Any commissioned officer of Her Majesty's navy, serving on board of any vessel of Her Majesty's navy, cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, Fishery Officer, or Stipendiary Magistrate on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the Customs

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of Canada, Sheriff, Magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat, within any harbour in Canada, or hovering (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, and stay on board so long as she may remain within such place or distance.

"IIIrd. If such ship, vessel, or boat be bound elsewhere, and shall continue within such harbour, or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel, or boat into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage, and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit 400 dollars; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom or Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the period named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.

"IVth. All goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the 2nd section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and upon conviction be liable to imprisonment for a term not exceeding two years."

Having reference to the above, you are requested to furnish any foreign fishing-vessels, boats, or fishermen found within 3 marine miles of the shore, within your district, with a printed copy of the warning inclosed herewith.

If any fishing vessel or boat of the United States is found fishing, or to have been fishing, or preparing to fish, or if hovering within the 3-mile limit, does not depart within twenty-four hours after receiving such warning, you will please place an officer on board of such vessel, and at once telegraph the facts to the Fisheries Department at Ottawa, and await instructions.

(Signed) J. JOHNSON, *Commissioner of Customs.*

To the Collector of Customs
at

No. 80.

The Earl of Rosebery to Sir L. West.

Sir,

Foreign Office, July 23, 1886.

I HAVE received your despatch of the 15th ultimo, in which you inclose a copy of a note from Mr. Bayard, protesting against a warning alleged to have been given to United States' fishing-vessels by a Canadian Customs official, with the view to prevent them from fishing within lines drawn from headland to headland from Cape Canso to St. Esprit, and from North Cape to East Point of Prince Edward Island.

In reply, I have to request you to acquaint Mr. Bayard that Her Majesty's Government have ascertained that no instructions to this effect have been issued by the Canadian Government, but that a further Report is expected upon the subject.

It appears that the Collector at Canso, in conversation with the master of a fishing-vessel, expressed the opinion that the headland line ran from Cranberry Island to St. Esprit, but this was wholly unauthorized.

I am, &c.

(Signed) ROSEBERY.

No. 81.

The Earl of Rosebery to Mr. Phelps.

Sir,

Foreign Office, July 23, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 16th instant, inclosing a copy of a telegram from Mr. Bayard, in which he calls upon Her Majesty's

Government to put a stop to the action of Canadian authorities towards United State fishermen, which he characterizes as unjust, arbitrary, and vexatious.

Mr. Bayard further states that the readiness of the United States' Government to endeavour to come to a just and fair joint interpretation of Treaty rights and commercial privileges is ill met by persistent and unfriendly action of the Canadian authorities, which is rapidly producing a most injurious and exasperating effect.

I cannot help regretting that the tone of this communication should not have more corresponded with the conciliatory disposition of Her Majesty's Government, for the expressions which I have cited can hardly tend to facilitate a settlement of the difficult questions involved.

I beg, however, to state that the views of the Canadian Government upon the whole matter will very shortly be communicated to the United States' Government in a despatch which I have addressed to Her Majesty's Minister at Washington, in reply to the various communications which he has received from Mr. Bayard. I shall have the honour to place a copy of the despatch in question in your hands.

As regards the disposition expressed by Mr. Bayard to come to a just and fair joint interpretation of Treaty rights, Her Majesty's Government have already displayed their full readiness to negotiate on more than one occasion, and their view of Treaty rights has been explained both in my conversations with yourself and in despatches.

I trust, therefore, that this expression of the wishes of your Government, corresponding as it does so entirely with our own desire, indicates the willingness of the United States to enter as speedily as possible into definite arrangements which may lead to negotiations on a practical basis for the settlement of this question.

I have, &c.
(Signed) ROSEBERRY.

No. 82.

The Earl of Rosebery to Mr. Phelps.

Sir,

Foreign Office, July 23, 1886.

IN reply to your note of the 2nd ultimo relative to the North American Fisheries question, I have the honour to transmit to you a copy of a despatch, with inclosures, which I have addressed to Her Majesty's Minister at Washington, and which contains a full statement of the views entertained by the Canadian Government on this matter.*

The points dealt with in the several communications recently received by Sir L. West from Mr. Bayard are practically the same as those discussed in your note, and I have therefore thought that the most convenient mode of replying to it would be to communicate to you a copy of the despatch which I have addressed to Her Majesty's Minister at Washington.

I need not reiterate the regret that Her Majesty's Government feel at being forced back by circumstances on the provisions of the Treaty of 1818, for I have earnestly and frequently expressed it in conversation with you. Nor need I repeat how anxious Her Majesty's Government are that by formal and friendly negotiation the questions between the two Governments with regard to Canadian fisheries should be put on a mutually satisfactory footing.

I have, &c.
(Signed) ROSEBERRY.

No. 83.

Mr. Bramston to Sir J. Pauncefoot.—(Received July 27.)

Sir,

Downing Street, July 26, 1886.

WITH reference to your letter of the 17th inst. nt, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a telegraphic correspondence with the Governor-General of Canada relative to the detention by the Dominion authorities of the American schooner "City Point."

I am, &c.
(Signed) JOHN BRAMSTON.

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Inclosure 1 in No. 83.

Earl Granville to the Marquis of Lansdowne

(Telegraphic.)

Downing Street, July 21, 1886.

SECRETARY of United States has made protest in very strong terms to British Minister against proceedings in case of schooner "City Point," alleged to have been detained at Shelburne for having landed men and obtained water.

Send explanation, by telegraph, as soon as possible.

Inclosure 2 in No. 83.

The Marquis of Lansdowne to Earl Granville.

(Telegraphic.)

July 24, 1886.

"CITY POINT" committed a breach of Customs Laws by not reporting to Customs and landing part of her crew and luggage. She was detained, but on payment of a deposit of 400 dollars was subsequently released.

No. 84.

Sir J. Pauncefote to Sir R. Herbert.

Sir,

Foreign Office, July 28, 1886.

I AM directed by the Earl of Rosebery to transmit to you two despatches from Her Majesty's Chargé d'Affaires at Washington,* containing protests by Mr. Bayard against the action of the Canadian authorities in regard to United States' fishing vessels, and I am to suggest that, if Earl Granville sees no objection, a Report on the cases mentioned should be obtained from the Dominion Government with as little delay as possible.

I am, &c.

(Signed)

JULIAN PAUNCEFOTE.

No. 85.

Mr. Hardinge to the Earl of Rosebery.—(Received July 30.)

My Lord,

Washington, July 17, 1886.

WITH reference to my despatch of the 12th instant, I have the honour to transmit herewith to your Lordship copy of a note which I have received from Secretary Bayard, protesting against the action of Captain Kent, of the Dominion cruiser "General Middleton," in expelling Stephen R. Balkam from the harbour of St. Andrew's, New Brunswick, and in refusing to permit him to purchase fish, caught and sold by Canadians, for the purpose of canning as sardines.

I have, &c.

(Signed)

CHARLES HARDINGE.

Inclosure in No. 85.

Mr. Bayard to Mr. Hardinge.

Sir,

Department of State, Washington, July 16, 1886.

I HAVE just received through the Honourable C. A. Boutelle, M.C., the affidavit of Stephen R. Balkam, alleging his expulsion from the harbour of St. Andrew's, New Brunswick, by Captain Kent, of the Dominion cruiser "Middleton," and the refusal to permit him to purchase fish, caught and sold by Canadians, for the purpose of canning as sardines.

The action of Captain Kent seems to be a gross violation of ordinary commercial

privileges against an American citizen proposing to transact his customary and lawful trade, and not prepared or intending in any way to fish or violate any local law or regulation or Treaty stipulation.

I trust instant instructions to prevent the recurrence of such unfriendly and unlawful treatment of American citizens may be given to the offending officials at St. Andrew's, and reparation be made to Mr. Balkam.

I have, &c.
(Signed) T. F. BAYARD.

No. 86.

Sir J. Pouncefote to Sir R. Herbert.

Sir, *Foreign Office, August 2, 1886.*
I AM directed by the Earl of Rosebery to transmit to you copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, inclosing a copy of a note from Mr. Bayard, protesting against the action of Captain Kent, of the Dominion cruiser "General Middleton," in refusing Stephen A. Balkam permission to buy fish from Canadians;* and I am to suggest that Earl Granville should obtain a Report on the subject from the Dominion Government.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

No. 87.

The Earl of Idlesleigh to Sir L. West.

Sir, *Foreign Office, August 4, 1886.*
WITH reference to your despatch of the 3rd ultimo, I transmit to you herewith a copy of a letter from the Colonial Office, inclosing copies of telegraphic correspondence with the Canadian Government relative to the seizure of the United States' schooner "City Point;"† and I have to request you to address a note to the Secretary of State in the sense of the Report furnished by the Dominion Government upon the circumstances of the case.

I am, &c.
(Signed) IDDESLEIGH.

No. 88.

Mr. Meade to Sir J. Pouncefote.—(Received August 6.)

Sir, *Downing Street, August 5, 1886.*
WITH reference to your letter of the 28th ultimo, and to previous correspondence respecting the action of the Canadian authorities in regard to United States' fishing-vessels, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Secretary of State for Foreign Affairs, copies of a despatch and of a telegram which have been addressed to the Governor-General of the Dominion on the subject.

I am, &c.
(Signed) R. H. MEADE.

Inclosure 1 in No. 88.

Earl Granville to the Marquis of Lansdowne.

My Lord, *Downing Street, July 29, 1886.*
I HAVE the honour to transmit to you a copy of a letter from the Foreign Office, inclosing two despatches from Her Majesty's Chargé d'Affaires at Washington, containing

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† No. 83.

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protests of Mr. Bayard against the action of the authorities of the Dominion in regard to United States' fishing-vessels.

I have to request that your Government will, with as little delay as possible, furnish Her Majesty's Government with a Report on the cases referred to.

I have, &c.
(Signed) GRANVILLE.

Inclosure 2 in No. 88.

Earl Granville to the Marquis of Lansdowne.

(Telegraphic.)

Downing Street, August 2, 1886.

SEND full particulars as to United States' fishing-vessels seized or warned off, grounds of seizure or warning, and exact locality, including distance from shore of such vessels.

No. 89.

The Earl of Iddesleigh to Sir L. West.

(Extract.)

Foreign Office, August 10, 1886

THE United States' Minister called on me to-day by appointment, and stated to me at some length his views as to the present position of the Fisheries question. He gave me the history of the case from 1818 and then proceeded to say that, so far as the merits of the case were concerned, he thought there was no insuperable difficulty. There might be some question as to the 3-mile limit in bays, but this could no doubt be settled without much trouble.

As regards other matters, there was a manifest incongruity between the old provisions of 1818 and the state of things at the present day; wood, for instance, might be obtained in our ports, but coal might not. Again, there was no proper legislation to support the provisions of the Treaty. All these were matters for discussion, and there seemed no reason why we should not arrive at their settlement. But what alarmed Mr. Bayard and himself was the temper with which the dispute was being, or was likely to be, conducted. He never took up a newspaper without anxiety lest there should be a report of some collision.

In conclusion, he threw out a suggestion that we should endeavour to establish an "armistice" while the question was under discussion; that while, on the one hand, the American Government would support any action on our part against vessels actually fishing within our waters (which he was sure they would not do), we should, on the other hand, abstain from putting the Customs laws in force to prevent, by a side wind, infractions of the Treaty which our law was inadequate to restrain.

He would then be glad to see a Commission appointed to consider the whole case, and to report on the steps which could be taken.

In conclusion, he pressed on me that the Congress was to meet on the first Monday in December, and that it was most important to settle the matter before that time.

No. 90.

Mr. Hardinge to the Earl of Rosebery.—(Received August 12.)

My Lord,

Washington, July 31, 1886.

I HAVE the honour to transmit herewith to your Lordship copy of a note which I have received from Mr. Bayard, drawing my attention to an alleged infraction of the stipulations of the Treaty of the 20th October, 1818, by the Newfoundland authorities at Bonne Bay, in the case of the fishing-vessel "Thomas F. Bayard," and by the Dominion authorities at Port Amherst, Magdalen Islands, in the case of the schooner "Mascot."

I have, &c.
(Signed) CHARLES HARDINGE.

Inclosure in No. 90.

Mr. Bayard to Mr. Hardinge.

Sir,

Department of State, Washington, July 30, 1886.

IT is my duty to draw your attention to an infraction of the stipulations of the Treaty between the United States of America and Great Britain concluded on the 20th October, 1818.

By the provisions of Article I of that Convention the liberty to take fish of every kind, for ever, in common with the subjects of His Britannic Majesty, is secured to the inhabitants of the United States "on the part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland; from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands," and on the other coasts and shores in the said Article set forth.

Notwithstanding these plain provisions, I regret to be obliged to inform you that, by the affidavit of the master of the American fishing-vessel "Thomas F. Bayard," that being at Bonne Bay, which is on the western coast of Newfoundland, and within the limits specified in Article I of the Convention referred to, the master of the said vessel was formally notified by one N. N. Taylor, the officer of Customs at that point, that his vessel would be seized if he attempted to obtain a supply of fish for bait or for any other transaction in connection with fishing operations within 3 marine miles of that coast.

To avoid the seizure of his vessel, the master broke up his voyage and returned home.

I am also in possession of the affidavit of Alex. T. Vachem, master of the American fishing-schooner "Mascot," who entered Port Amherst, Magdalen Islands, and was there threatened by the Customs official with seizure of his vessel if he attempted to obtain bait for fishing or to take a pilot.

These are flagrant violations of Treaty rights of their citizens, for which the United States expect prompt remedial action by Her Majesty's Government; and I have to ask that such instructions may be issued forthwith to the provincial officials of Newfoundland and the Magdalen Islands as will cause the Treaty rights of citizens of the United States to be duly respected.

For the losses occasioned in the two cases I have mentioned, compensation will hereafter be expected from Her Majesty's Government, when the amount shall have been accurately ascertained.

I have, &c.

(Signed) T. F. BAYARD.

No. 91.

Mr. Hardinge to the Earl of Rosebery.—(Received August 12.)

My Lord,

Washington, August 2, 1886.

I HAVE the honour to acknowledge the receipt of your Lordship's despatches to Sir L. West of the 28rd ultimo, relating to the North American Fisheries question, and to inform your Lordship that, in compliance with the instructions contained therein, I have forwarded to Mr. Bayard copies of the above-mentioned despatches, together with their inclosures.

I have, &c.

(Signed) CHARLES HARDINGE.

No. 92.

Sir J. Pauncefoot to Sir R. Herbert.

Sir,

Foreign Office, August 17, 1886.

I AM directed by the Earl of Idlesleigh to transmit to you a copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, inclosing a copy of a note from Mr. Bayard calling attention to alleged infractions of the Convention of 1818 by the authorities at Bonne Bay, Newfoundland, and at Port Amherst, Magdalen Islands; * and

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I am to request that Mr. Secretary Stanhope will obtain Reports on these cases from the Colonial Governments.

In connection with the complaint thus made by the United States' Government, I am to suggest that it might perhaps be desirable to recommend the Colonial Governments to issue special instructions to the local authorities at those places where the right of inshore fishery has been granted by the Convention of 1818 to United States' fishermen, calling their attention to the provisions of that Convention, and warning them that no action contrary thereto may be taken in regard to United States' fishing-vessels.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 93.

The Earl of Iddesleigh to Mr. Hardinge.

Sir,

Foreign Office, August 18, 1886.

I HAVE received your despatch of the 31st ultimo, inclosing a copy of a note from Mr. Bayard, calling attention to alleged infractions of the Convention of 1818 by the authorities at Bonne Bay, Newfoundland, and at Port Amherst, Magdalen Islands; and I have to request you to state, in reply, that immediate inquiry shall be made into the matter with the view that the rights secured by the Convention to United States' fishermen shall in no wise be prejudiced.

I am, &c.

(Signed) IDDESLEIGH.

No. 94.

Mr. Hardinge to the Earl of Iddesleigh.—(Received August 23.)

My Lord,

Washington, August 10, 1886.

I HAVE the honour to transmit herewith to your Lordship copy of a note which I have received from the Secretary of State, drawing the attention of Her Majesty's Government to the alleged unwarrantable and unfriendly treatment experienced by the American fishing-schooner "Rattler" on the 3rd instant upon the occasion of her being driven by stress of weather to seek shelter in the harbour of Shelburne, Nova Scotia.

I have, &c.

(Signed) CHARLES HARDINGE.

Inclosure in No. 94.

Mr. Bayard to Mr. Hardinge.

Sir,

Department of State, Washington, August 9, 1886.

I REGRET that it has become my duty to draw the attention of Her Majesty's Government to the unwarrantable and unfriendly treatment, reported to me this day by the United States' Consul-General at Halifax, experienced by the American fishing-schooner "Rattler," of Gloucester, Massachusetts, on the 3rd instant, upon the occasion of her being driven by stress of weather to find shelter in the harbour of Shelburne, Nova Scotia.

She was deeply laden, and was off the harbour of Shelburne when she sought shelter in a storm, and cast anchor just inside the harbour's entrance.

She was at once boarded by an officer of the Canadian cutter "Terror," who placed two men on board.

When the storm ceased, the "Rattler" weighed anchor to proceed on her way home, when the two men placed on board by the "Terror" discharged their pistols as a signal, and an officer from the "Terror" again boarded the "Rattler," and threatened to seize the vessel unless the captain reported at the Custom-house.

The vessel was then detained until the captain reported at the Custom-house, after which she was permitted to sail.

The hospitality which all civilized nations prescribe has thus been violated, and the stipulations of a Treaty grossly infringed.

A fishing-vessel, denied all the usual commercial privileges in a port, has been compelled strictly to perform commercial obligations.

In the interests of amity, I ask that this conduct may be properly rebuked by the Government of Her Majesty.

I have, &c.
(Signed) T. F. BAYARD.

No. 95.

Mr. Meade to Sir J. Pauncefote.—(Received August 26.)

Sir,

Downing Street, August 25, 1886.

WITH reference to the letter from this Department of the 5th instant respecting the action of the Canadian authorities in regard to fishing-vessels of the United States, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch from the Governor-General of Canada, giving the particulars relating to such vessels seized or warned which were asked for by the telegram, a copy of which accompanied my letter above referred to.

I am, &c.
(Signed) R. H. MEADE.

Inclosure 1 in No. 95.

The Marquis of Lansdowne to Earl Granville.

(Extract.)

Citadel, Quebec, August 4, 1886.

I HAD the honour of receiving your Lordship's telegram of the 2nd instant, requesting me to supply you with full particulars of all United States' fishing-vessels which had been seized or warned off by the fisheries police of the dominion, of the grounds for such seizures or warnings, and of the exact locality in which they had taken place, with especial reference to the distance from the shore of such vessels at the time when they were seized or warned.

In regard to seizures, I have ascertained that the only cases have been the following:—

1. The "David J. Adams," seized at Digby, Nova Scotia, on the 7th May last.
2. The "Ella M. Doughty," of Portland, Maine, seized at Englishtown, Nova Scotia, on the 17th May last.
3. The "City Point," seized at Shelburne, Nova Scotia, on the 2nd July last.
4. The "George W. Cushing" and the "C. B. Harrington," both of which vessels were seized at Shelburne on the 3rd July. Copies of the seizure reports which contain all the information of which my Government is possessed relative to these seizures are inclosed herewith.

The circumstances under which the "D. J. Adams" was seized have been already explained at some length in my previous despatches. This vessel is still detained, and awaits trial before the Vice-Admiralty Court.

Particulars with regard to the "Ella M. Doughty" were given in my despatch of the 26th May. This vessel has been released, her owners having deposited the sum of 3,000 dollars.

The "City Point," "George W. Cushing," and "C. B. Harrington" were released upon deposit of 400 dollars each, that being the amount of the penalty to which they were liable under section 29 of "The Customs Act of 1883," which they had contravened.

I also inclose, for your Lordship's information, copies of the Boarding Books of the Government Fisheries protection vessels "Lansdowne," "Critic," "F. E. Conrad," "Terror," "General Middleton," and "L. Howlett." In the large majority of cases where vessels have been warned or ordered to leave Canadian waters the vessel was boarded in harbour, and it has been thought sufficient to give the name of the harbour by way of a description of the locality. In the few cases in which vessels appear to have been boarded outside a port or harbour, in which cases no seizure was made or attempted, and a simple warning given in accordance with the terms of the Circular, of which your Lordship has already seen a copy, it has, I understand, not been thought necessary to instruct the officer in command of the police vessels to mark the locality with greater

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exactness than by giving the name of the port or harbour off or near which the vessel was boarded.

In the case of vessels actually seized, the Reports contain much fuller information as to the locality.

I may mention in explanation of the fact, that the Returns of some of the police vessels have not been brought down to a more recent date; that these vessels are ordered not to come into port more than once a week, and then only if they can be spared from their cruising ground.

I have given directions that your Lordship is to be from time to time supplied with further information in regard to any seizures or warnings which may hereafter take place.

Inclosure 2 in No. 95.

Port of Digby, N.S.

ON the 7th day of May, 1886, I, Botsford Viets, a Collector in Her Majesty's Customs, duly appointed and sworn as such, did detain the following described vessel, to wit, the fishing-schooner "David J. Adams," of Gloucester, in the United States of America, of the burden of 66 tons, or thereabouts, commanded by Captain Allen Kenney, owner not known, of the probable value of 3,000 dollars, for an infraction of the Revenue Laws of the Dominion of Canada, that is to say, for having come from a port out of Canada and entered Digby Gut and anchored in the Annapolis Basin, near Digby, in the Province of Nova Scotia, not making a Report in writing to the proper officer of the arrival and voyage of the vessel, as required by section 25; wherefore the said vessel became liable to detention for a penalty under the provisions of the Act 46 Vict., cap. 12, secs. 25 and 29. The said vessel being to the best of my knowledge and belief the property (unknown), whose Post-office address is unknown, and at the time of this detention in the possession or custody of Allen Kenney, at Digby, in the County of Digby, N.S., whose Post-office address is unknown. The circumstances which led to the detention were the following, viz. :—

On or about the 5th instant, the "David J. Adams" entered Digby Gut, and on the 6th instant bought four barrels fresh herrings, on the 7th anchored off Bear Island at a place known as the Half-tide Weir. Afterwards the vessel changed her berth and sailed further along the shore. On the 7th instant, Captain P. A. Scott, R.N., of Dominion Government's steam-ship "Lansdowne," boarded her, and she subsequently, on the same day, came to anchor off Digby. Information was derived from a person or persons not connected with the Customs service in Canada.

Assistance was rendered in making said detention by other officers in Her Majesty's Customs, viz. :—

Delivery made of the said detention to the Collector of Customs at Digby on the 7th day of May, 1886.

At the date hereof the said vessel has not been claimed.

The said reputed or supposed owner, _____, in such circumstances as to be able to pay the penalty fixed by law for the said contravention thereof, and _____ been heretofore guilty of a similar offence.

Dated at Digby, this 15th day of May, 1886.

(Signed) B. VIETS.

Port of Shelburne.

On the 2nd day of July, 1886, I, W. W. Atwood, a Collector of Customs in Her Majesty's Customs, duly appointed and sworn as such, did seize the following described vessel, to wit, schooner "City Point," of Portland, 59 tons, Stephen Keene, master, fishing schooner, of the probable value of 5,000 dollars, for an infraction of the Revenue Laws of the Dominion of Canada, that is to say, for having filled water and allowing seamen to land at their homes with their luggage, &c., without first reporting inwards at custom-house; wherefore the said schooner "City Point" became liable to a penalty under the provisions of the Act 46 Vict., cap. 12, sec. 29. The said schooner "City Point" being to the best of my knowledge and belief the property of some person or persons to me unknown, whose Post-office address is Portland, Maine, and at the time of this seizure in the possession or custody of Stephen Keene, master, at Shelburne, Nova Scotia, whose Post-office address is Portland, Maine. The circumstances which led to the seizure were as follows, viz. :—

The schooner was discovered by Captain Quigley, of Dominion cutter "Terror," at

anchor 6 miles below Shelburne Town. The master had allowed part of crew to land at their homes, taking their luggage, &c., with them; also had filled water, and failed to report at custom-house until after vessel brought up by captain of cutter. Information was the cause of seizure, and was derived from a person or persons connected with the Customs service of Canada.

Assistance was rendered in making said seizure by other officers in Her Majesty's Customs, viz., Captain Quigley, of Dominion cutter "Terror."

Delivery made of the said _____ to the Collector of Customs at _____, on the _____ day of _____, 1886.

At the date hereof, the said vessel has been released, the amount of 400 dollars fine having been deposited with the Collector of Customs at Halifax.

The said reputed or supposed owner, _____, in such circumstances as to be able to pay the penalty fixed by law for the said contravention thereof, and been heretofore guilty of a similar offence.

Dated at Shelburne, this 16th day of July, 1886.

(Signed)

W. W. ATWOOD, Collector.

Port of Shelburne.

On the 3rd day of July, 1886, I, W. W. Atwood, a Collector of Customs in Her Majesty's Customs, duly appointed and sworn as such, did seize the following described vessels, to wit, American fishing-schooner "George W. Cushing," 61 tons, C. B. Jewitt, master, and the "C. B. Harrington," 21 tons, John Frellick, master, both of and direct from Portland, of the probable value of 7,000 dollars, for an infraction of the Revenue Laws of the Dominion of Canada, that is to say, for having allowed seamen to land, and masters on shore seeking to buy bait, without first reporting at custom-house; wherefore the said vessels became liable to a penalty under the provisions of the Act 46 Vict., cap. 12, sec. 20, the said vessels being, to the best of my knowledge and belief, the property of some person or persons to me unknown, whose Post-office address is Portland, Maine, and at the time of this seizure in the possession or custody of Captains C. B. Jewitt and John Frellick, at Shelburne, N.S., whose Post-office address is Portland, Maine. The circumstances which led to the seizure were as follows, viz.:—

The vessels were discovered on the 2nd instant by Captain Quigley, of Dominion cutter "Terror," at anchor about 8 miles below Shelburne Town, some of the men and the masters of vessels on shore seeking to buy bait. Masters did not report until vessels brought up next morning by Captain Quigley. Master of "Cushing" had also been at the port of Yarmouth, seeking bait before arriving here, and failed to report at custom-house. Information was the cause of seizure, and was derived from a person or persons connected with the Customs service of Canada.

Assistance was rendered in making said seizure by other officers in Her Majesty's Customs, viz., Captain Quigley, of Dominion cutter "Terror."

Delivery made of the said _____ to the Collector of Customs at _____, on the _____ day of _____, 1886.

At the date hereof the said vessels have been released, the amount of penalty, 400 dollars for each vessel, having been deposited with the Collector of Customs at Halifax.

The said reputed or supposed owner, _____, in such circumstances as to be able to pay the penalty fixed by law for the said contravention thereof, and been heretofore guilty of a similar offence.

Dated at Shelburne, this 16th day of July, 1886.

(Signed)

W. W. ATWOOD, Collector.

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Copy of Boarding Book of Government Fisheries Protection Schooner "Critic," cruising between

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Vessels.	Name of Vessel and Owner.		Tonnage.		Port of Registry.	When and where Boarded.		By whom Boarded.	Remarks.		
	Owner.	Master.	Tons.	Men.		Date.	Place.				
Cecil U. Low	Benj. Low	A. McKenzie	75	16	Gloucester	1886 July 4	Souris	Captain	Just from home. No fish. Lost seine boat.	No fish.	Lost seine
Henrin Wood	Geo. Norwood and Son	H. McEachern	84	16	"	"	"	"	Just from home. No fish.	No fish.	
A. H. Harding	A. C. Adams	A. C. Adams	61	16	"	"	"	"	Ditto.		
Edward Rich	R. W. Freeman	Jno. Newell	74	16	Wellfield	July 6	Malpeque	"	Cought no fish.		
R. S. Newcomb	Albt. E. Linnel	A. E. Linnel	66	14	Provincetown	"	"	"	Cruizing since June 21, 50 barrels.		
Irelie N. Howe	Elin Lewis	Elin Lewis	79	17	Gloucester	"	"	"	Just from home. No fish.		
Orient	Chas. Lee	Chas. Lee	89	16	"	"	"	"	No fish.		
Ellen W. Sawyer	J. W. Sawyer	J. Orchard	103	18	Portland	"	"	"	Caught 20 barrels fish.		
William M. Gaffney	Joe Smith	Jas. W. Thomas	70	16	Gloucester	"	"	"	Just arrived. No fish.		
May Flower	Cunningham and Thompson	J. McKinnon	108	16	"	"	"	"	Caught 80 barrels.		
Morning Star	T. L. Mayo	P. P. Smith	76	15	Boston	"	"	"	No fish. Only arrived two days ago.		
Ossipee	Cunningham and Thompson	J. Johnston	69	14	Gloucester	"	"	"	Fishing three weeks. 120 barrels.		
Moro Castle	McKenzie and Harding	Edwin Joyce	88	17	"	"	"	"	Fishing four weeks. 30 barrels.		
Martha C.	L. Whalen	T. Cunningham	75	16	"	"	"	"	Caught 85 barrels off North Cape.		
Molly Adams	Sol. Jacobs	S. Jacobs	117	17	"	"	"	"	Caught 120 barrels.		
Andrew Burnham	Debutts and Daggett	N. F. Blake	84	17	Boston	July 7	Casumpeque	"	No fish yet.		
Fannie Belle	W. B. Combs	F. Hall	82	17	Gloucester	"	"	"	300 barrels fish.		
Charles H. Kelly	J. W. Campbell	J. W. Campbell	95	16	"	"	"	"	275 barrels fish, off North Cape.		
Waterfall	S. N. Mayo	C. Sprague	65	15	Boston	"	"	"	No fish. Cruizing two days.		
Leona	J. W. Sawyer	Albt. Long	70	16	Portland	"	"	"	140 barrels, off North Cape.		
G. P. Whitman	W. G. Poole	W. G. Poole	89	16	Gloucester	"	"	"	Fifteen days out. Caught 20 barrels.		
Julia Ella	B. A. Williams	B. A. Williams	89	16	"	"	"	"	Four weeks out. 20 barrels fish.		
Martha Bradley	Burns and Co.	J. Burns	43	17	Friendship	"	"	"	One week out. 30 barrels fish.		
John S. McQuinn	S. Smith	J. F. Vautier	72	17	Gloucester	"	"	"	Three weeks out. 300 barrels fish.		
Samuel R. Crane	J. S. McDonald	Chas. Martin	77	17	"	"	"	"	Just arrived. No fish yet.		
Howard Holebrook	J. McDonald	Owen Whitman	74	17	"	"	"	"	70 barrels, off North Cape.		
Edward E. Webster	Oaks and Foster	S. Huddier	90	16	"	"	"	"	12 barrels. Out two days.		
Eleaza Boynton	W. Parsons	Chas. Keene	91	16	"	"	"	"	Two weeks out. 17 barrels fish.		
Pioneer	L. Whalen	Geo. Martin	84	16	"	"	"	"			
A. R. Crittenden	Isaac Steele	J. F. Orichett	62	15	"	"	"	"			
Eliza Thompson	C. D. Thompson	E. S. Bibber	81	16	"	"	"	"			
Centennial	D. C. Babson	A. McKue	88	16	Portland	"	"	"			
			110	17	Gloucester	"	"	"			

Copy of Boarding Book of Government Fisheries Protection Schooner "F. E. Conrad," cruising between and

Vessels.	Name of Vessels and Owner.		Tonnage.		Port of Registry.	When and where Boarded.		By whom Boarded.	Remarks.
	Owner.	Master.	Tons.	Mcn.		Date.	Place.		
Jennie Scavens ..	Jos. J. Tupper ..	Jos. J. Tupper ..	107	16	Gloucester ..	1886. July 22	Miscou Light ..	Captain Smeltzer	225 barrels mackerel. Cautiomed him not to enter Bay Chaleur.
Golden Hind ..	Rowe and Jordan ..	R. Cameron ..	82	16	" ..	" 22	" ..	" ..	397 barrels mackerel. Cautiomed him not to enter Bay Chaleur.
Alice C. Jordan ..	" ..	J. Warren ..	82	16	" ..	" 22	" ..	" ..	Ditto.
Phil. P. Frye ..	Sydney Smith ..	Sydney Smith ..	80	17	" ..	" 22	" ..	" ..	300 barrels mackerel. Cautiomed him not to enter Bay Chaleur.
Norelty. ..	Brown and Co. ..	Geo. Joyce ..	197	35	Portland ..	" 26	" ..	First officer ..	Just from home on second trip. Cautiomed as above. Ordered her away Put in for water. No fish.
Howard Holbrook ..	Oakes and Foster ..	Chas. A. Keene ..	93	16	Gloucester ..	June 26	Port Hawkesbury..	Captain Smeltzer	Ditto.
Gertie May ..	Chas. A. Gutil ..	Isaac Dougherty ..	96	14	Portland ..	" 28	Port Melgrave ..	" ..	Ditto.
May Flower ..	Cunningham and Thompson ..	Jno. A. McKinnon ..	108	16	Gloucester ..	" 28	" ..	" ..	Ditto.
Col. J. H. French. ..	Jno. Chisholm ..	Wm. Harris ..	79	16	" ..	July 7	Souris, P.E.I. ..	" ..	Ditto.
Pendragon ..	A. Mansfield ..	John Mason ..	68	14	" ..	" 7	" ..	" ..	Ditto.

Norw.—All above vessels ordered off, left next day.

Copy of Boarding Book of Government Fisheries Protection Schooner "Lansdowne," cruising between and

Vessels.	Name of Vessels and Owner.			Tonnage.		Port of Registry.	When and where Boarded.		By Whom Boarded.	Remarks.
		Owner.	Master.	Tons.	Men.		Date.	Place.		
J. B. Putnam	David Crowell	Chas. Rudolf	..	76	14	Salem, Massachusetts	1886. Mar. 26	Pubnico ..	J. B. Hill	On fishing voyage. In for water, &c. Got his bait in Gloucester.
David ..	Jno. F. Wanson	Jas. L. Kenny	..	..	14	Gloucester, Massachusetts	" 26	Argyle ..	"	No one on board.
Frank William	W. E. Wanson	G. Malone	..	63	15	" "	" 27	Barrington	"	For West Bank, had bait from house.
J. B. Putnam	D. Crowell	Chas. Rudolf	..	76	14	Salem ..	" 28	Shelburne	"	In for shelter and water.
Lenobia.	Geo. Steele	D. Morrissey	..	76	14	Gloucester	" 29	Pubnico ..	"	In for shelter.
A. J. Doucan	" "	W. E. Morrissey	..	83	14	" "	" 29	" "	"	Captain and crew belong to Pubnico.
Knight Templar	" "	Leander Jamieson.	..	69	14	" "	" 29	" "	"	Captain on shore.
Plymouth Rock	" "	J. D. Morrissey	..	92	14	" "	" 29	" "	"	Come in for shelter. Had bait from home. Ordered out.
Satellite	E. Woodly	L. Hawkins	..	20	7	Eastport ..	Apr. 15	Beaver Harbour	"	In to change her register. Owner belongs to Beaver Harbour.
Northern Light	Geo. E. Proctor	J. Patterson	..	53	12	Gloucester	" 23	Shelburne	"	Lost main-topmast, came in for repairs. Sail as soon as possible.
Electric Light	" "	"	..	15	3	" "	" 23	Clark's Harbour	"	Lobster smack.
Falcon ..	A. Taylor	Malone	..	63	14	" "	" 28	St. Andrew's Bay	"	In seeking for bait. Owners ordered them to buy bait in Canadian waters. Ordered them off. They left immediately.
Conie E. Jaywood.	M. Saywood	W. Phillips	..	59	11	" "	" 28	" "	"	Say that owners gave them orders to buy bait in Canadian waters. Ordered them off. They went immediately.
Pioneer .	C. Whalen	J. Crockett	..	62	12	" "	" 28	" "	"	Seized for a violation of the Customs Laws and Fishery Acts.
Athstockley	G. Norwood.	A. Olsen	..	83	14	" "	" 28	" "	"	Ordered him to leave.
David J. Adams	Jesse Lewis	A. Kenny	..	66	13	" "	May 7	Digby ..	"	In for wood and water. Ordered her to sea.
Horace Albert	J. Smith	J. W. Rove	..	65	12	" "	" 8	" "	"	Ordered her to sea.
Zenobia.	Geo. Steele	D. Morrissey	..	75	14	" "	" 18	Pubnico ..	"	Come in for repairs. Bound for Sand Banks.
Knight Templar	" "	Leander Jamieson.	..	69	14	" "	" 18	" "	"	In for water; had a sick man on board.
Conductor	T. Haskell	E. Chapman	..	69	14	" "	June 2	" "	"	Boarded when about on limits.
J. G. Craig	Cush and McKay	J. Webber	..	73	18	Portland .	" 19	Liverpool	"	
Mollie Adams	Sol. Jacobs	S. Jacobs	..	117	17	Gloucester	July 3	Richmond Harbour, P.E.I.	"	

Name of Vessels and Owner.				Tonnage.		Port of Registry.	When and where Boarded.		By whom Boarded.	Remarks.
Vessels.	Owner.	Master.	Tons.	Men.	Date.		Place.			
R. T. Newcombe.	S. Lincell ..	— Lincell	66	14	1886. July 3	Richmond Harbour, P. E. I.	J. B. Hill	All in for shelter.
Fanny Bell	W. R. Coome	E. H. Hall	31	17	..	..	..	..	..
H. G. Frame	J. W. Campbell and Co.	J. Chisholm	95	16	..	..	..	..	..
H. A. Woods	G. Norwood and Son ..	H. McAckern	84	16	..	..	..	..	..
E. A. Thomas	C. D. Thomas	C. D. Thomas	..	..	..	..	..	..	..
W. J. Crosby	Z. Carroll	F. Carroll	107	17	..	..	..	..	..
W. S. Smith	A. M. Smith	L. Jewitt	109	17	..	..	..	..	..
Mollie Adams	S. Jacobs ..	S. Jacobs	117	17	..	..	..	..	..
Nellie W. Long	E. Lewis ..	E. Lewis	79	17	..	..	..	..	..
Maria C.	L. Whaler ..	A. W. Cunningham	75	16	..	..	..	..	..
M. Castle	..	..	..	..	..	..	..	..	..
Leona ..	..	..	..	..	..	..	..	..	..
C. H. Low	..	..	..	..	..	..	..	..	..
Orient ..	..	..	..	..	..	..	..	..	..
E. W. Sawyer	..	..	..	..	..	..	..	..	..
Mary Fluor	..	..	..	..	..	..	..	..	..

COPY of Boarding Book of Government Fisheries Protection Schooner "Terror," cruising between Shelburne and Shag Harbour.

Name of Vessels and Owner.			Tonnage.		Port of Registry.	When and where Boarded.		By whom Boarded.	Remarks.	
Vessels.	Owner.	Master.	Tons.	Men.		Date.	Place.			
Elisha Crowell ..	Dan Allan of Gloucester	Captain John Case.	67	14	Gloucester	1866. July 27	Sand Point	..	Captain Quigley	Called for stores and water. Ordered him to Shelburne to report to Customs. He did so, and immediately went to sea again. Ordered her to sea.
John Wanson ..	Doty Wanson	— Wanson	55	10	"	June 16	Shelburne	..	"	Ordered her to sea. She went, and left one dory and one man behind.
Northern Star ..	J. O. Proctor	F. J. Patterson	53	8	"	" 19	Sand Point	..	"	Ordered to sea. Son sick with diphtheria.
J. G. Craig ..	Cushing and Mackenzie	Captain Webber	73	10	Portland, Maine	" 22	Liverpool	..	"	Ordered to sea. Sailed at 4 next morning.
May C. Gloster ..	C. Cunningham	L. Whalan	56	12	Gloucester	" 23	"	..	First Mate ..	Buying lobsters.
Sarah E. Lee ..	Pool and Gardner	— Thompson	74	14	"	" 28	"	..	"	
City Point ..	..	..	..	12	Portland, Maine	July 3	Sand Point	..	Captain Quigley	
George W. Cushing ..	C. B. Jewett and H. Williams	..	..	..	Portland	" 3	McNutt's Island	..	"	
C. B. Herrington ..	Chas. H. Day	— Fetters	21	5	"	" 3	Cape Roseway	..	"	
Thomas B. Rackett ..	Captain Rackett	— Rackett	35	6	Greenport, L. I.	" 7	Sand Point	..	"	

Copy of Boarding Book of Government Fisheries Protection Schooner "General Middleton," cruising between
and

Name of Vessels and Owner.				Tonnage.		Port of Registry.	When and where Boarded.		By whom Boarded.	Remarks.
Vessels.	Owner.	Master.		Tons.	Men.		Date.	Place.		
Gracie Ann	J. O. Grady..	Captain Lewis	..	4	1	Eastport, Maine	1886	Red Head Cove	W. H. Kent..	Lobster boat bound for Eastport.
Sarah E. Hyde	J. Murphy ..	J. Murphy ..	..	34	4	Friendship, Maine	May 29	Wrighton's Island	"	Lobster boat bound for Boston.
Richard S. Newcomb	Captain Lemell ..	Captain Lemell ..	..	94	16	Provincetown	June 18	Little River Tacket.	"	A sciner. No fish. Bound to Bay Chaleur.
St. Plonnet	..	..	..	..	..	Eastport, Maine	" 19	St. Andrew's Bay..	"	Reported to be on trial trip.
Everitt Steele	..	Captain C. H. Forbes	..	..	..	Gloucester	July 8	Puñico..	"	Called for water.
							June 30			

Copy of Boarding Book of Government Fisheries Protection Schooner "L. Howlett," cruising between
and

Name of Vessels and Owner.				Tonnage.		Port of Registry.	When and where Boarded.		By whom Boarded.	Remarks.
Vessels.	Owner.	Master.		Tons.	Men.		Date.	Place.		
Ossipee	Cunningham and Thompson	John Johnson	..	68	16	Gloucester	1886	Malpeque	C. M. Lurvey.	In for shelter.
Morning Star	G. S. Mayo ..	P. P. Smith	..	76	15	Boston ..	July 6		"	Ditto.
Robin Hood	A. Mansfield	A. C. Burnham	..	86	16	Gloucester	" 7	"	"	Ditto.
Moro Castle	McKenzie, Harding, and Co.	E. Joyce	..	88	17	"	" 7	"	"	Ditto.
S.S. Norelly	H. B. Joyce.	H. B. Joyce	..	197	35	Portland	" 12	Off Tignish	"	In for medical aid.
Samuel R. Crane.	John McDonough	Owen Whitten	..	74	17	Gloucester	" 12	"	"	In for water.
Hattie Evelyn	J. A. Cromwell	J. A. Cromwell	..	66	15	"	" 13	"	"	Ditto.
S.S. Norelly	H. B. Joyce	H. B. Joyce	..	197	35	Portland	" 15	"	"	Short of coal. In for wood.
Lizette Smith	N. B. Rich ..	Thomas Newcome	..	77	16	Wellfleet	" 16	Cascumpaque	"	In for shelter.
Cecil H. Low	Benj. Low ..	A. McKenzie	..	75	16	Gloucester	" 6	Malpeque	"	Ditto.
Eliza A. Thomas.	C. D. Thomas	E. S. Bibber	..	88	16	Portland.	" 6	"	"	Ditto.
A. H. Harding	George Norwood	A. C. Adams	..	61	16	Gloucester	" 6	"	"	Ditto.
Cha. H. Kelley	S. N. Mayo..	C. E. Sprague	..	65	15	Boston ..	" 6	"	"	Ditto.

Name of Vessels and Owner.

Name of Vessels and Owner.				Tonnage.		Port of Registry.	When and where Boarded.		By whom Boarded.	Remarks.
Vessels.	Owner.	Master.		Tons.	Men.		Date.	Place.		

No. 96.

Sir J. Pauncefote to Mr. Meade.

Sir,

Foreign Office, August 26, 1886.

I AM directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Chargé d'Affaires at Washington,* inclosing a copy of a protest by Mr. Bayard against alleged unfriendly treatment of the United States' fishing schooner "Rattler" in Shelburne Harbour; and I am to request that a Report on the subject may be obtained from the Dominion Government.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 97.

Sir L. West to the Earl of Iddesleigh.—(Received August 30.)

My Lord,

Washington, August 18, 1886.

I HAVE the honour to transmit herewith to your Lordship copy of a note which I have received from the Secretary of State protesting against the action of the officer of the Canadian schooner "E. F. Conrad" in forbidding the master of the American schooner "Golden Hind" to enter the Bay of Chaleur for the purpose of renewing his supply of fresh water at that place.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 97.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, August 17, 1886.

AN affidavit has been filed in this Department by Reuben Cameron, master of the American schooner "Golden Hind," of Gloucester, Massachusetts, setting forth that on or about the 23rd July ultimo, being out of water, he attempted to put into Port Daniel, Bay of Chaleur, to obtain a fresh supply; that at the entrance of the bay, about 4 or 5 miles from land, the "Golden Hind" was boarded by an officer from the Canadian schooner "E. F. Conrad," and by him ordered not to enter the Bay of Chaleur; that said officer furnished Captain Cameron with a printed "Warning," with this indorsement written thereon: "Don't enter the Bay of Chaleur, Nova Scotia;" and that in consequence of said act of the Canadian officer, the "Golden Hind" was obliged to go across to Tignish, Prince Edward Island, to obtain water, whereby his fishing venture was interfered with and loss and injury caused to the vessel and her owners.

I have the honour to protest against this act of officers of Her Britannic Majesty as not only distinctly unfriendly and contrary to the humane usage of civilized nations, but as in direct violation of so much of Article I of the Convention of 1818 between the United States and Great Britain as secures for ever to American fishermen upon the British North American coast admission to the bays or harbours thereof for the purpose of obtaining water. And for all loss or injury which may be shown to have accrued by reason of the act in question, the Government of Her Britannic Majesty will be held justly liable.

I have further the honour to ask, with all earnestness, that the Government of Her Britannic Majesty will cause steps to be forthwith taken to prevent and rebuke acts so violative of Treaty and of the common rights of hospitality.

I have, &c.

(Signed) T. F. BAYARD.

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No. 98.

Sir L. West to the Earl of Iddesleigh.—(Received August 30.)

My Lord,

Washington, August 18, 1886.

I HAVE the honour to inclose herewith to your Lordship copy of a despatch which, in conformity with the instructions contained in your Lordship's despatch of the 4th instant, I have addressed to the United States' Government relative to the seizure of the American schooner "City Point" at Shelburne, Nova Scotia.

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure in No. 98.

Sir L. West to Mr. Bayard.

Sir,

Washington, August 18, 1886.

WITH reference to your note of the 2nd ultimo, reporting to me the detention of the American schooner "City Point," of Portland, Maine, by the Canadian authorities at the port of Shelburne, Nova Scotia, and protesting against their action in so doing, I have the honour to inform you, in accordance with instructions which I have received from Her Majesty's Government, that the master of the schooner "City Point" committed a breach of the Customs Laws of the Dominion by not reporting to Custom, and landing part of the crew and baggage.

The vessel in question was subsequently released on deposit of 400 dollars.

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

No. 99.

Mr. Meade to Sir J. Parncefote.—(Received August 30.)

Sir,

Downing Street, August 28, 1886.

I AM directed by Mr. Secretary Stanhope to acknowledge the receipt of your letter of the 17th instant, inclosing copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, with a note from Mr. Bayard calling attention to alleged infractions of the Convention of 1818 by the authorities of Canada and Newfoundland at the Magdalen Islands and Bonne Bay respectively.

On the receipt of your letter Mr. Stanhope telegraphed to the Officers administering the Governments of Canada and Newfoundland calling attention to these cases and explaining that, under the Treaty of 1818, United States' fishermen have the right to fish off the coasts of the Magdalen Islands and off certain coasts of Newfoundland, and stating that it was presumed that the Customs officials in those places had not been instructed in same way as on other parts of the coast.

But from the inclosed despatch recently received from the Governor of Newfoundland, and from the inclosed telegraphic correspondence, it would appear that such has been the case in that Colony.

I am now to inclose, for the information of the Earl of Iddesleigh, a copy of a despatch which has been addressed to the Officers administering the Governments of Canada and Newfoundland respectively upon this subject.

I am, &c.

(Signed)

R. H. MEADE.

Inclosure 1 in No. 99.

Mr. Stanhope to Governor Sir G. W. Des Vaux.(Extract.)
(Telegraphic.)

July 20, 1886.

REFERRING to your telegram of the 10th June, newspaper reports warning Notice has been given to American fishing-boat by Customs officer, Bonne Bay. Send explanation by telegraph.

Inclosure 2 in No. 99.

Governor Sir G. W. Des Vaux to Earl Granville.(Extract.)
(Telegraphic.)

July 30, 1886.

DESPATCH by mail, explaining that fishery Notice merely to maintain protest. Action will not be taken this year in any case, not at all without Order in Council under Act of Parliament 59 Geo. III, chap. 38. Attorney-General in England will explain.

Inclosure 3 in No. 99.

Governor Sir G. W. Des Vaux to Earl Granville.

My Lord,

Government House, Newfoundland, August 2, 1886.

WITH reference to your Lordship's telegram, received by me on the 29th ultimo, requesting explanation as to a newspaper report of a warning Notice having been served on American fishermen at Bonne Bay (to which message I replied on the following day), I have the honour to report that a Circular, with form of Notice inclosed (copy of each of which is annexed) has been forwarded to the various public officers stationed on the coasts of this island.

2. In so far as has at present been reported, the warning has as yet been served on only one vessel, which left at once on its receipt.

3. As stated in my telegraphic message, there is no intention on the part of this Government to follow up the Notice by an action this year in any case, or at any time, without the sanction of Her Majesty's Government, conveyed by Order in Council.

4. The Government believe that the Notice will act to a certain extent as a deterrent, and will serve as evidence that this Colony does not acquiesce in the assumption by American fishermen of a privilege to which they have no right.

5. This being the sole subject of the Notice, the subject did not strike me as of sufficient importance to deserve a separate Report. Now, however, that a newspaper account of the matter has, I find, caused apprehension of serious results, I take blame to myself for not having supplied your Lordship with early information.

I have, &c.

(Signed) G. WILLIAM DES VŒUX.

Inclosure 4 in No. 99.

*Circular.**Colonial Secretary's Office, St. John's, Newfoundland,
June 17, 1886.*

Sir,

IN view of the attempts of United States' fishermen to obtain fishery supplies on our coasts, contrary to the provisions of the Convention of 1818, the Government have ordered that the various Customs officers, immediately upon hearing of the arrival of any United States' fishing-vessel in ports within their jurisdiction, shall serve the master thereof with a letter warning him of his infraction of the Treaty.

To facilitate you in this matter, I inclose you printed copies of a letter which it will be only necessary to date, sign, and address.

You will please report to me the names of all captains, with the names and tonnage and port of their vessel, to whom you may send this letter.

I have, &c.

(Signed) J. W. WITHERS, *pro Colonial Secretary.*

Inclosure 5 in No. 99.

Form of Notice.

Sir,

1886

I AM instructed to give you notice that the presence of your vessel in this port is in violation of the Articles of the International Convention of 1818 between Great Britain and the United States, in relation to fishery rights on the coast of Newfoundland, and of the Laws in force in this country for the enforcement of the Articles of the Convention, and that the purchase of bait or ice, or other transaction in connection with fishery operations, within 3 miles of the coasts of this Colony, will be in further violation of the terms of said Convention and Laws.

I am, &c.

Officer of Customs at

Captain

Schooner

Inclosure 6 in No. 99.

Governor Sir G. W. Des Vœux to Mr. Stanhope.

(Telegraphic.)

Newfoundland, August 24, 1886.

I FIND that mistake with regard to the American rights was committed, but corrected three weeks ago by order to discontinue Notices on coasts referred to in Convention of 1818. I am informed that Notices have been reported as served in only two cases. Details will be forwarded by mail.

Inclosure 7 in No. 99.

Mr. Stanhope to the Officer Administering the Government of Canada and Governor Sir G. W. Des Vœux.

Sir,

Downing Street, August 25, 1886.

[WITH reference to your despatch of the 2nd instant] I have the honour to transmit to you a copy, received through the Foreign Office, of a despatch from Her Majesty's Chargé d'Affaires at Washington, with a note from Mr. Bayard, calling attention to alleged infractions of the Convention of 1818 by the authorities of Canada and Newfoundland at the Magdalen Islands and Bonne Bay respectively.

In my telegram of the 21st instant I drew your attention to the case at the Magdalen Islands [Bonne Bay], and I pointed out that United States' fishermen have the right under the Convention of 1818 to fish off the coasts of the Magdalen Islands [certain parts of the coast of Newfoundland, including the west coast].

I have now to request that your Government will furnish me with a full Report upon the subject of Mr. Bayard's complaint, so far as it relates to the action of the Canadian authorities [authorities of Newfoundland].

Her Majesty's Government would recommend that special instructions should be issued to the authorities at those places where the inshore fishery has been granted by the Convention of 1818 to United States' fishermen, calling their attention to the provisions of that Convention, and warning them that no action contrary thereto may be taken in regard to United States' fishing-vessels.

I have, &c.

(Signed) E. STANHOPE.

No. 100.

The Earl of Idlesleigh to Mr. Phelps.

Sir,

Foreign Office, September 1, 1886.

HER Majesty's Government have been anxiously considering what further action they can take in the present state of the Canadian Fisheries question to advance matters

* To Newfoundland only.

towards the friendly and equitable solution so much desired by both Governments, and I beg now to offer the following observations in order to explain the difficulties which present themselves.

There are two distinct issues involved. The one relates to the precise limits of the Treaty rights of American fishermen in Canadian waters; the other to the legality of the measures adopted by the Canadian authorities (having regard to the existing legislation) against certain American fishing-vessels for an alleged violation of Treaty.

Both those issues are at the present time *sub judice* in the Canadian Courts, and it is not improbable that they will be carried before the competent Tribunal of Appeal in this country.

If the ultimate decision should be favourable to the views of your Government as regards the interpretation of the Treaty of 1818 the principal question will be disposed of, and, if the decision should be adverse to those views, it will not preclude further discussion between the two Governments and the adjustment of the question by diplomatic action. But it is clearly right, and according to practice and precedent, that such diplomatic action should be suspended during the completion of the judicial inquiry.

In the present case, however there is every reason to desire that the two Governments, without awaiting the result of the judicial proceedings, should allay the popular feeling which these differences have excited in both countries, by an attempt to effect such an equitable revision of the Treaty as may reconcile conflicting interests.

With this view my predecessor addressed a despatch to Her Majesty's Minister at Washington, containing a Report from the Canadian Government on all the points involved, and instructed him to communicate it to your Government, and to invite their friendly observations upon that document, in the hope that such an interchange of views might lead to some basis of negotiation.

No reply has been received by Her Majesty's Government to that communication, but assurances have repeatedly been exchanged between the two Governments of their desire to come to an arrangement.

The hopes which were entertained at one time of a settlement on a broad and comprehensive basis by means of a new Commercial Treaty were unfortunately frustrated by the rejection of the proposal for a Joint Commission.

It may be, however, that a more restricted basis might be acceptable to your Government, such, for instance, as an arrangement limited entirely to the fishery interests.

It is evident that the great desire of both Governments to arrive at an equitable arrangement cannot be attained unless they are both prepared to make some concessions.

The nature of the concessions which it would be in the power of this country to make with reference to the Canadian fisheries are well known; but Her Majesty's Government, who have naturally been in constant communication with the Dominion Government on this question, are quite unable to make any proposal to them of the nature contemplated, unless they are informed to what extent the United States' Government are disposed to meet them in the way of concession.

Her Majesty's Government therefore earnestly hope that the Government of the United States may find themselves able to view the position in the light in which I have placed it before you, and by a frank declaration of the nature of the benefits which they are prepared to offer on their side to facilitate the efforts of Her Majesty's Government to take some immediate action towards the settlement of this most important and urgent question.

I have, &c.
(Signed) IDDESLEIGH.

No. 101.

Sir L. West to the Earl of Idlesleigh.—(Received September 3.)

My Lord,

Washington, August 19, 1886.

I HAVE the honour to transmit herewith to your Lordship copy of a note which I have received from the Secretary of State informing me of the causes of complaint alleged by the masters of several American fishing-vessels against Captain Quigley, of the Canadian cruiser "Terror."

I have, &c.
(Signed) L. S. SACKVILLE WEST.

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Inclosure in No. 101.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, August 18, 1886.

GRAVE cause of complaint is alleged by the masters of several American fishing-vessels, among which can be named the schooners "Shiloh" and "Julia Ellen," against the hostile and outrageous misbehaviour of Captain Quigley, of the Canadian cruiser "Terror," who, upon the entrance of these vessels into the harbour of Liverpool, Nova Scotia, fired a gun across their bows to hasten their coming-to, and placed a guard of two armed men on board each vessel, who remained on board until the vessels left the harbour.

In my note to your Legation of the 9th instant I made earnest remonstrance against another unfriendly act of Captain Quigley, against the schooner "Rattler," of Gloucester, Massachusetts, which, being fully laden and on her homeward voyage, sought shelter from stress of weather in Shelburne Harbour, Nova Scotia, and was there compelled to report at the custom-house, and have a guard of armed men kept on board.

Such conduct cannot be defended on any just ground, and I draw your attention to it in order that Her Britannic Majesty's Government may reprimand Captain Quigley for his unwarranted and rude act.

It was simply impossible for this officer to suppose that any invasion of the fishing privileges of Canada was intended by these vessels under the circumstances.

The firing of a gun across their bows was a most unusual and wholly uncalled-for exhibition of hostility, and equally so was the placing of armed men on board the peaceful and lawful craft of a friendly neighbour.

I have, &c.

(Signed) T. F. BAYARD.

No. 102.

The Earl of Idlesleigh to Sir L. West.

Sir,

Foreign Office, September 4, 1886.

I HAVE received your despatch of the 19th ultimo, inclosing a copy of a note from Mr. Bayard calling attention to causes of complaint alleged by masters of several United States' fishing-vessels against Captain Quigley, of the Canadian cruiser "Terror;" and I have to acquaint you, in reply, that steps have been taken to obtain a Report from the Dominion Government on the subject.

I am, &c.

(Signed) IDDESLEIGH.

No. 103.

The Earl of Idlesleigh to Sir L. West.

Sir,

Foreign Office, September 4, 1886.

WITH reference to Mr. Hardinge's despatch of the 31st July last, inclosing a copy of a note from Mr. Bayard calling attention to alleged infractions of the Convention of 1818 by the authorities at Bonne Bay, Newfoundland, and at Port Amherst, Magdalen Islands, I transmit to you herewith a copy of a letter from the Colonial Office, with its inclosures on this question;* and I have to request that you will address a communication to Mr. Bayard, showing the steps which have been taken in the matter in consequence of the protest of the United States' Government.

I am, &c.

(Signed) IDDESLEIGH.

No. 104.

Sir P. Currie to Sir R. Herbert.

Sir,

Foreign Office, September 4, 1886

I AM directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a note from the United States' Secretary of State calling attention to causes of complaint alleged by the masters of several United States' fishing-vessels against Captain Quigley, of the Canadian cruiser "Terror;"* and I am to request that a Report on the subject may be obtained from the Dominion Government.

I am, &c.

(Signed) P. CURRIE.

No. 105.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, September 6, 1886.

I HAVE received your despatch of the 18th ultimo, inclosing a copy of a note from Mr. Bayard protesting against the action of the officer of the Canadian schooner "E. F. Conrad" with regard to the United States' schooner "Golden Hind;" and I have to request that you will state to Mr. Bayard that immediate inquiry shall be made into the matter with the view of preventing any infractions of the rights secured to United States' vessels by Treaty.

I am, &c.

(Signed) IDDESLEIGH.

No. 106.

Sir P. Currie to Sir R. Herbert.

Sir,

Foreign Office, September 6, 1886.

I AM directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a note from Mr. Bayard protesting against the action of the officer of the Canadian schooner "E. F. Conrad," in forbidding the master of the United States' schooner "Golden Hind" to enter the Bay of Chaleur for the purpose of renewing his supply of fresh water at that place.†

The warning off of the vessel under the circumstances stated would appear to be a distinct breach of the Convention of 1818, and Lord Iddesleigh would therefore suggest that the Canadian Government should be requested to furnish with the least possible delay a Report on the case.

Lord Iddesleigh further suggests, for the consideration of Mr. Stanhope, that in calling for the Report in question, it would be highly desirable to add that Her Majesty's Government earnestly hope the Dominion Government will take prompt steps to prevent any infractions of the Convention on their side, and that if the facts stated by Mr. Bayard are correct, steps will be at once taken by the Dominion Government to reprimand the officials concerned.

I am, &c.

(Signed) P. CURRIE.

No. 107.

Sir R. Herbert to Sir J. Pauncefoot.—(Received September 13.)

Sir, *Downing Street, September 11, 1886.*
 I AM directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Earl of Ildesleigh, a copy of a despatch, with its inclosures, from the Governor-General of Canada, relative to the seizure of the "Ella M. Doughty."
 I am, &c.
 (Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 107.

Governor-General the Marquis of Lansdowne to Earl Granville.

My Lord, *Citadel, Quebec, August 5, 1886.*
 I HAVE the honour to forward, for your Lordship's information, copies of the papers relative to the seizure of the United States' fishing-schooner "Ella M. Doughty."
 I have, &c.
 (Signed) LANSDOWNE.

Inclosure 2 in No. 107.

Mr. Graham to Mr. Burbidge.

Sir, *Halifax, August 5, 1886.*
 I RECEIVED your telegram to-day as follows:—
 "Please send me to-day copy of Collector of Customs affidavit in re 'Doughty' seizure."
 The only affidavit made by the Collector of Customs is the affidavit to lead warrant, which is very brief, and contains no particulars of fact, the Admiralty Rules only requiring that it should state the nature of the claim. I therefore forward, in addition to this, the other documents enumerated below, as they may contain some information required by you. Inclosed herewith are:—
 1. Affidavit of Daniel G. McAskill and Donald J. Morrison, 18th May, 1886.
 2. Affidavit of Angus Morrison, 31st May, 1886.
 3. Affidavit of Donald McRitchie, 31st May, 1886.
 4. Statement of Torquell McLean.
 5. Statement of Donald J. Morrison, 31st May, 1886.
 6. Statement of Daniel G. McAskill, 31st May, 1886.
 7. Copy of affidavit of Lauchlin G. Campbell to lead warrant, "Regina v. 'Ella M. Doughty.'"
 8. Copy of plaintiff's Petition, "Reg. v. 'Ella M. Doughty.'"
 Yours, &c.
 (Signed) WALLACE GRAHAM.

We, Daniel G. McAskill and Donald J. Morrison, of Englishtown, do solemnly swear that we sold, on the 12th day of March, 1886, 1,400 herring, at 25 cents per 100, and on the 13th, 3 barrels, more or less, at 1 dollar per barrel, to schooner "Ella M. Doughty."

(Signed) DAN. G. McASKILL.
 D. J. MORRISON.

Sworn to before me, this 18th day of May, 1886.
 (Signed) D. McAULAY, Deputy Collector.

I, Angus Morrison, Englishtown, make the following statement, and say :—

That I was aboard schooner "Ella M. Doughty," with Torquell McLean, selling 500 herring for 30 cents per 100. I did not sell any myself. The captain and crew were warning us not to tell. The day before this day the crew were ashore, wanting me to take herring aboard in night-time. They were talking about the trading licence, but they did not know whether it was good or not.

I, Angus Morrison, do solemnly swear that the above statements are true and correct in all their particulars.

(Signed) ANGUS MORRISON.

I, the Undersigned, certify that the above Angus Morrison made the statements, and swore to them, before me, this 31st day of May, 1886.

(Signed) D. McAULAY, Deputy Collector.

I, Donald McRitchie, went aboard schooner "Ella M. Doughty" on the 12th day of May, 1886, and took aboard with me 900 herring, which the captain bought from me, and gave me 2 dol. 25 c. for them.

Captain of schooner "Ella M. Doughty" wished me to keep it quite secret. While I was about leaving, Donald McInnes, Daniel G. McAskill, and Donald J. Morrison came aboard. I solemnly swear that the above statements are correct, so help me God.

(Signed) DONALD McRITCHIE.

I, the Undersigned, certify that the above statements were made before me, and sworn to, on the 31st day of May, 1886.

(Signed) D. McAULAY, Deputy Collector.

I, Torquell McLean, and Angus Morrison, went aboard schooner "Ella M. Doughty" on the 13th May, and sold herring; and there was aboard Donald McInnes, Donald J. Morrison, and Daniel G. McAskill.

This statement made in presence of Daniel Morrison and Daniel McLean.

Torquell McLean refuses to sign this or swear to it; says it is true.

(Signed) D. McAULAY, Deputy Collector.

I, Donald J. Morrison, was in the boat on the 12th day of May, 1886, with Daniel G. McAskill and Donald McInnes, when the dory of the schooner "Ella M. Doughty" met us coming home, with nets and herring; the crew told us to clean nets and take herring aboard, and captain would buy them when we were in vessel. We saw aboard Torquell McLean and Donald McRitchie. They seemed to be very much afraid that they would be seized. Second day we went aboard: Torquell McLean and Angus Morrison (little) had left schooner "Ella M. Doughty," and they commenced cleaning net. The said Torquell McLean and Angus Morrison went aboard with herring when cleaned out of nets, and we saw the herring taken out of boat into the vessel "Ella M. Doughty." While aboard they saw some men ashore, and they asked us if they were Customs officers.

We got 25 cents per 100 for 1,400 first day, and 3 dollars for the lot which we had the second day, 13th instant, which was 3 barrels, more or less.

(Signed) DONALD J. MORRISON, his X mark.

Englishtown, May 31, 1886.

I, the Undersigned, certify that the above statement was made before me, this 31st day of May, 1886.

(Signed) D. McAULAY, Deputy Collector.

When I, D. G. McAskill, and D. J. Morrison and Donald McInnes, were coming home on the 12th May instant, 1886, with nets with herring in and not taken out of net, a dory met us that came from the schooner "Ella M. Doughty," and asked us if we had herring to sell. D. McInnes told them we had about 1,000 herring. They told us to get herring out of nets and go aboard, and they would buy them. They seemed to be afraid of being seized, as they (the crew) of vessel told us not to report them ashore. When we were aboard, Donald McRitchie, Eel Cove, was aboard. Torquell McLean was

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aboard after D. McRitchie left schooner "Ella M. Doughty." We were aboard when Torquell McLean put bait aboard said schooner "Ella M. Doughty."

Second Day.

We went to said schooner and had about 3 barrels of herring, more or less, and captain said he had no change, but would give 3 dollars for the lot. Torquell McLean and Angus Morrison were then on board, but let the vessel go, and commenced taking herring out of net, and they went aboard again, and sold the herring to captain, but I did not see them receive any payment. When we counted herring first day we had 1,400, and we got 25 cents per 100.

(Signed) DAN. G. McASKILL.

Englishtown, May 31.

I, the Undersigned, do certify that the above statement was made in my presence.
(Signed) D. McAULAY, Deputy Collector.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

Her Majesty the Queen, Plaintiff, against the Ship or Vessel "Ella M. Doughty" and her Cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain Convention between His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, of the one part, and the United States of America of the other part, made on the 20th day of October, 1818, and for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the fifty-ninth year of the reign of His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, being chapter 38 of the Acts of the said last-named Parliament made and passed in the said year.

Also for forfeiture of the said vessel and her cargo for violation of chapter 61 of the Acts of the Parliament of the Dominion of Canada, made and passed in the year 1868, and of chapter 15 of the Acts of the said Parliament, passed and made in the year 1870, and of chapter 23 of the Acts of the said Parliament, made and passed in the year 1871.

I, Lauchlin G. Campbell, of Baddeck, in the County of Victoria and Province of Nova Scotia, Collector of Customs, make oath and say as follows:—

1. That the Honourable John S. D. Thompson, Her Majesty's Attorney-General for the Dominion of Canada, claims, on behalf of Her Majesty the Queen, to have the said ship or vessel "Ella M. Doughty" and her cargo condemned to Her Majesty the Queen for violation of a certain Convention between His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, of the one part, and the United States of America of the other part, made and signed at London, in Great Britain, on the 20th day of October, in the year of our Lord 1818, and also for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the fifty-ninth year of the reign of His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, being chapter 38 of the Acts of the said Parliament, made and passed in the said year, and being intituled "An Act to enable His Majesty to make Regulations with respect to the taking and curing of fish in certain parts of the coasts of Newfoundland and Labrador, and His said Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America."

The said Honourable John S. D. Thompson, Her Majesty's Attorney-General for the Dominion of Canada, also claims, on behalf of Her Majesty the Queen, to have the said ship "Ella M. Doughty" and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter 61 of the Acts of the Parliament of the Dominion of Canada, made and passed in the year 1868, and intituled "An Act respecting fishing by foreign vessels," and for violation of chapter 15 of the Acts of the Parliament of the Dominion of Canada, made and passed in the year 1870, and intituled "An Act to amend the Act respecting fishing by foreign vessels," and for violation of chapter 23 of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1871, and intituled "An Act further to amend the Act respecting fishing by foreign vessels."

The said ship "Ella M. Doughty" is a foreign vessel, and not navigated according to the laws of the United Kingdom of Great Britain and Ireland or of the Dominion of

Canada, and is registered in the United States of America, and is owned by foreigners residing in the said United States of America.

I further make oath and say that the aid of this Court is required to enforce the said claim.

I am the Collector of Customs at Baddeck aforesaid.

(Signed)

ALEX. TAYLOR.

LAUHLIN GEO. CAMPBELL.

On the 25th day of May, A.D. 1886, the said Lauchlin George Campbell was duly sworn to the truth of this affidavit at Baddeck, in the County of Victoria and Province of Nova Scotia, before me,

, Collector of Customs.

A Commissioner duly appointed to administer oaths in the Vice-Admiralty Court of Halifax.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

Her Majesty the Queen, Plaintiff, against the Ship or Vessel "Ella M. Doughty" and her Cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain Convention between His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, of the one part, and the United States of America of the other part, made on the 20th day of October, 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the fifty-ninth year of the reign of His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, being chapter 38 of the Acts of the said last-named Parliament, made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter 61 of the Acts of the Parliament of the Dominion of Canada, made and passed in the year 1868, and of chapter 15 of the Acts of the said Parliament, passed and made in the year 1870, and of chapter 23 of the Acts of the said Parliament, made and passed in the year 1871.

Writ issued on the 20th day of May, A.D. 1886.

1. A certain Convention between His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, and the United States of America, was made and signed at London on the 20th day of October, 1818, and by the 1st Article thereof, after reciting that differences had arisen respecting the liberty claimed by the said United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it was agreed between the High Contracting Parties that the inhabitants of the said United States should have for ever in common with the subjects of His Britannic Majesty the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, creeks, and harbours from Mount Joly on the southern coast of Labrador to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen should also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland thereabove described and of the coast of Labrador; but so soon as the same or any portion thereof should be settled, it should not be lawful for the said fishermen to dry and cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the said United States thereby renounce for ever any liberty theretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen should be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they should be under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them.

2. That a certain Act of the Parliament of the United Kingdom of Great Britain and Ireland was made and passed in the fifty-ninth year of the reign of His late Majesty King George III, being chapter 38 of the Acts of the said Parliament, made and passed in the fifty-ninth year of the reign of His said late Majesty King George III, and being intituled "An Act to enable His Majesty to make Regulations with respect to the taking and curing of fish on certain parts of the coasts of Newfoundland, Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America."

3. That on the 29th day of March, A.D. 1867, a certain other Act of the Parliament of the United Kingdom of Great Britain and Ireland was made and passed, being chapter 3 of the Acts of the said Parliament passed in the thirtieth and thirty-first years of the reign of Her present Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, and being intituled "An Act for the union of Canada, Nova Scotia, and New Brunswick, and the Government thereof, and for purposes connected therewith," which said Act is cited and known as "The British North America Act, 1867."

4. That a certain Act of the Parliament of Canada was made and passed in the thirty-first year of the reign of Her said Majesty Queen Victoria, being chapter 61 of the Acts of the said Parliament made and passed in the year 1866, and being intituled "An Act respecting fishing by foreign vessels."

And a certain other Act of the Parliament of Canada was made and passed in the thirty-third year of the reign of Her said Majesty Queen Victoria, being chapter 15 of the Acts of the said Parliament made and passed in the year 1870, and being intituled "An Act to amend the Act respecting fishing by foreign vessels." And in the thirty-fourth year of the reign of Her said Majesty Queen Victoria, a certain other Act of the said Parliament of Canada was made and passed, being chapter 23 of the Acts of the said Parliament made and passed in the year 1871, and being intituled "An Act further to amend the Act respecting fishing by foreign vessels."

5. That the said Convention and the said several Acts hereinbefore mentioned were and are still in full force and effect.

6. The harbour of St. Anns, situate in the County of Victoria, in the Province of Nova Scotia, together with its outlet to the Bay of St. Anns, and also the said Bay of St. Anns, all hereinbefore designated as the bay and harbour of St. Anns, are a portion of the dominions in America formerly of His late Majesty George III, King of the United Kingdom of Great Britain and Ireland, and now of Her Majesty Queen Victoria, Queen of the United Kingdom of Great Britain and Ireland, not included or lying on that part of the southern coast of Newfoundland which extends to Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, or on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast.

7. That the said ship "Ella M. Doughty," whereof one Warren A. Doughty, who was not a natural-born subject of Her Majesty, was or is master, is a foreign ship or vessel not navigated according to the laws of the United Kingdom of Great Britain and Ireland or according to the laws of Canada, but was and is a ship of the United States of America, owned by foreigners, that is to say, by persons residing in and being citizens of the United States of America, where the said ship or vessel was built and enrolled, and the said ship or vessel, "Ella M. Doughty," was at the time hereinafter mentioned licensed and permitted to carry on the fisheries under and in pursuance of the Acts of the United States of America, and was engaged in the prosecution of the fisheries and on a fishing voyage, and was and is without a licence to fish, or any licence whatsoever in that behalf from the Government of Canada or of Nova Scotia, under the Statutes of Canada or of Nova Scotia in that behalf.

8. Between the 10th and the 17th days of May, 1886, the said Warren A. Doughty, the master of the said ship or vessel "Ella M. Doughty," and the officers and crew of the said ship or vessel "Ella M. Doughty," did in and with the said ship or vessel "Ella M. Doughty" enter into the bay and harbour of St. Anns aforesaid within 3 marine miles of the shores of the said bay and harbour of St. Anns, and within 3 miles of the coasts, bays, creeks, and harbours of those portions of the dominions in America of His said late Majesty King George III, being now the dominions in America of Her Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the said Convention, and set out and recited in the first paragraph hereof, for the purpose of procuring bait, that is to say, herrings wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing, and of fresh

fish to be fished for, taken and caught, by and upon the said vessel, and by the master, officers, and crew thereof, and did procure such bait wherewith to fish, and such ice for the purposes aforesaid, and did so enter for other purposes than the purpose of shelter or repairing damages or of purchasing wood or of obtaining water, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said bay and harbour of St. Anns, by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

9. The said Warren A. Doughty, the master of the said ship or vessel "Ella M. Doughty," and the officers and crew of the said ship or vessel "Ella M. Doughty," did between the 10th and 17th days of May, 1886, and subsequently in the said ship or vessel "Ella M. Doughty," in the bay and harbour of St. Anns aforesaid, and while he and they and the said ship or vessel "Ella M. Doughty" were within 3 marine miles of the coasts or shores of the said bay and harbour of St. Anns, and within 3 marine miles of the coasts, shores, bays, creeks, and harbours of those portions of the dominions in America of His said late Majesty King George III, being now the dominions in America of Her Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the said Convention, and set out and recited in the said first paragraph hereof, fish for fish and take fish, and did dry and cure fish, and were preparing to fish within the meaning of the said Convention and of the said several Acts hereinbefore mentioned, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said bay and harbour of St. Anns by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for violation of the said Convention and of the said several Acts.

10. The said Warren A. Doughty, the master of the said ship or vessel "Ella M. Doughty," and the officers and crew of the said ship or vessel "Ella M. Doughty," were, between the said 10th and 17th days of May, 1886, and subsequently in the said ship or vessel "Ella M. Doughty," in the bay and harbour of St. Anns aforesaid, and while he and they and the said ship or vessel "Ella M. Doughty" were within 3 marine miles of the coasts or shores of the said bay and harbour of St. Anns, and within 3 marine miles of the coasts, shores, bays, creeks, and harbours of those portions of the dominions in America of His late Majesty King George III, being now the dominions in America of Her Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the said Convention, and set out and recited in the first paragraph hereof, preparing to fish within the meaning of the Convention and of the said several Acts hereinbefore mentioned contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said bay and harbour of St. Anns by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

11. Between the said 10th and 17th days of May, 1886, and subsequently, in the said bay and harbour of St. Anns, within 3 marine miles of the shores thereof, and within 3 marine miles of the coasts, bays, creeks, and harbours of those portions or parts of the dominions in America of His late Majesty King George III, being now the dominions in America of Her present Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the said Convention, and set out and recited in the said first paragraph hereof, the said ship or vessel "Ella M. Doughty" was found to be fishing within the said distance of 3 marine miles of the said coasts, bays, creeks, and harbours, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said bay and harbour of St. Anns by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

12. Between the said 10th and 17th days of May, 1886, and subsequently thereto, in the said bay and harbour of St. Anns, within 3 marine miles of the shores thereof and within 3 marine miles of the coasts, bays, creeks, and harbours of those parts or portions of the dominions in America of His said late Majesty King George III, being now the dominions in America of Her present Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the said Convention, and set out

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and recited in the said first paragraph hereof, the said ship or vessel "Ella M. Doughty" was found to have been fishing within the said distance of 3 marine miles of the said coasts, bays, creeks, and harbours, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo was thereupon seized within 3 marine miles of the coasts or shores of the said bay and harbour of St. Anns by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

13. Between the said 10th and 17th days of May, 1886, and subsequently, in the said bay and harbour of St. Anns, within 3 marine miles of the shores thereof and within 3 marine miles of the coasts, bays, creeks, and harbours of those parts or portions of the dominions in America of His said late Majesty King George III, being now the dominions in America of Her present Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the said Convention, and set out and recited in the first paragraph hereof, the said ship or vessel "Ella M. Doughty" was found to be preparing to fish within the said distance of 3 marine miles of the coasts, bays, creeks, and harbours, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo was thereupon seized within 3 marine miles of the coasts or shores of the said bay or harbour of St. Anns by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for violation of the said Convention and of the said several Acts.

14. During the months of April and May 1886 the said Warren A. Doughty, the master of the said ship or vessel "Ella M. Doughty," and the officers and crew of the said ship or vessel "Ella M. Doughty," did in the said ship or vessel "Ella M. Doughty" enter within 3 marine miles of the coasts, bays, creeks, and harbours of the Province of Nova Scotia, being a portion of the dominions of America of His said late Majesty King George III, and now of Her said Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the Convention, and set out and recited in the first paragraph hereof, for the purpose of procuring bait, that is to say, herrings, wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing and of fresh fish to be fished for, taken and caught by and upon the said vessel and by the master, officers, and crew thereof, and did procure such bait wherewith to fish and such ice for the purposes aforesaid, and did so enter for other purposes than the purpose of shelter or repairing damages or of purchasing wood or of obtaining water, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said Province of Nova Scotia by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

15. During the months of April and May 1886 the said Warren A. Doughty, the master of the said ship or vessel "Ella M. Doughty," and the officers and crew of the said ship or vessel "Ella M. Doughty," did in the said ship or vessel "Ella M. Doughty," and while he and they and the said ship or vessel "Ella M. Doughty" were within 3 marine miles of the coasts, bays, creeks, and harbours of the Province of Nova Scotia, being a portion of the dominions in America formerly of His said late Majesty King George III, and now of Her Majesty Queen Victoria, not included within the limits specified and defined in the said 1st Article of the said Convention, and set out and recited in the said first paragraph hereof, fish for fish, take fish, and dry and cure fish, and were preparing to fish within the meaning of the said Convention and of the several Acts hereinbefore mentioned, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said Province of Nova Scotia by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

16. During the months of April and May 1886 the said Warren A. Doughty, the master of the said ship or vessel "Ella M. Doughty," and the officers and crew of the said ship or vessel "Ella M. Doughty," were in the said ship or vessel "Ella M. Doughty," and while he and they and the said ship or vessel "Ella M. Doughty" were within 3 marine miles of the coasts, bays, creeks, and harbours of the Province of Nova Scotia, being a portion of the dominions in America formerly of His late Majesty King George III and now of Her Majesty Queen Victoria, not included within the limits

specified and defined in the said 1st Article of the said Convention set out and recited in the first paragraph hereof, preparing to fish within the meaning of the said Convention and of the several Acts hereinbefore mentioned, contrary to the provisions of the said Convention and of the said several Acts, and the said vessel "Ella M. Doughty" and her cargo were thereupon seized within 3 marine miles of the coasts or shores of the said Province of Nova Scotia by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for violation of the said Convention and of the said several Acts.

The Honourable John S. D. Thompson, Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty the Queen, claims the condemnation of the said ship and her cargo and her guns, ammunition, tackle, apparel, furniture and stores, for violation of the said Convention and of the said several Acts.

(Signed) WALLACE GRAHAM,
Solicitor for the Attorney-General of Canada.

No. 108.

Mr. Phelps to the Earl of Idlesleigh.—(Received September 13.)

My Lord,

Legation of the United States, London, September 11, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 1st September on the subject of the Canadian fisheries.

I received also on the 16th August last from Lord Rosebery, then Foreign Secretary, a copy of a note on the same subject, dated the 23rd July, 1886, addressed by his Lordship, through the British Minister at Washington, to Mr. Bayard, the Secretary of State of the United States, in reply to a note from Mr. Bayard to the British Minister of the 10th May, and also to mine addressed to Lord Rosebery under date of the 2nd June. The retirement of Lord Rosebery from office immediately after I received his note prevented a continuance of the discussion with him. And in resuming the subject with your Lordship, it may be proper to refer both to Lord Rosebery's note and to your own. In doing so I repeat in substance considerations expressed to you orally in recent interviews.

My note to Lord Rosebery was confined to the discussion of the case of the "David J. Adams," the only seizure in reference to which the details had then been fully made known to me. The points presented in my note, and the arguments in support of them, need not be repeated.

No answer is attempted in Lord Rosebery's reply. He declines to discuss the questions involved, on the ground that they are "now occupying the attention of the Courts of Law in the Dominion, and may possibly form the subject of an appeal to the Judicial Committee of Her Majesty's Privy Council in England."

He adds:—

"It is believed that the Courts in Canada will deliver Judgment in the above cases very shortly; and until the legal proceedings now pending have been brought to a conclusion, Her Majesty's Government do not feel justified in expressing an opinion upon them, either as to facts or the legality of the action taken by the Colonial authorities."

And your Lordship remarks, in your note of the 24th August, "It is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

This is a proposition to which the United States' Government is unable to accede.

The seizures complained of are not the acts of individuals claiming private rights which can be dealt with only by judicial determination, or which depend upon facts that need to be ascertained by judicial inquiry. They are the acts of the authorities of Canada, who profess to be acting, and in legal effect are acting, under the authority of Her Majesty's Government. In the Report of the Canadian Minister of Marine and Fisheries, which is annexed to and adopted as a part of Lord Rosebery's note, it is said:—

"The Colonial Statutes have received the sanction of the British Sovereign, who, and not the nation, is actually the party with whom the United States made the Convention. The officers who are engaged in enforcing the Acts of Canada, or the laws of the Empire, are Her Majesty's officers, whether their authority emanates directly from the Queen or from her Representative the Governor-General."

The ground upon which the seizures complained of are principally justified is the allegation, that the vessels in question were violating the stipulations of the Treaty between the United States and Great Britain. This is denied by the United States' Government. The facts of the transaction are not seriously in dispute, and if they were

could be easily ascertained by both Governments, without the aid of the judicial Tribunals of either. And the question to be determined is the true interpretation of the Treaty, as understood and to be administered between the High Contracting Parties.

The proposition of Her Majesty's Government amounts to this: that before the United States can obtain consideration of their complaint, that the Canadian authorities, without justification, have seized, and are proceeding to confiscate, American vessels, the result of the proceedings in the Canadian Courts, instituted by the captors as the means of the seizures, must be awaited, and the decision of that Tribunal on the international questions involved obtained.

The interpretation of a Treaty when it becomes the subject of discussion between two Governments is not, I respectfully insist, to be settled by the judicial Tribunals of either. That would be placing its construction in the hands of one of the parties to it. It can only be interpreted for such a purpose by the mutual consideration and agreement which were necessary to make it. Questions between individuals arising upon the terms of a Treaty may be for the Courts to which they resort to adjust. Questions between nations as to national rights secured by Treaty are of a very different character, and must be solved in another way.

The United States' Government is no party to the proceedings instituted by the British authorities in Canada, nor can it consent to become a party. The proceedings themselves are what the United States complain of, as unauthorized, as well as unfriendly. It would be inconsistent with the dignity of a Sovereign Power to become a party to such proceedings, or to seek redress in any way in the Courts of another country for what it claims to be the violation of Treaty stipulations by the authorities of that country.

Still less could it consent to be made indirectly a party to the suits by being required to await the result of such defence as the individuals whose property is implicated may be able and may think proper to set up. Litigation of that sort may be indefinitely prolonged. Meanwhile, fresh seizures of American vessels upon similar grounds are to be expected, for which redress would in like manner await the decisions of the local Tribunals, whose jurisdiction the captors invoke and the United States' Government denies.

Nor need it be again pointed out how different may be the question involved between the Governments from that which these proceedings raise in the Canadian Courts. Courts in such cases do not administer Treaties. They administer only the Statutes that are passed in pursuance of Treaties. If a Statute contravenes the provisions of a Treaty, British Courts are, nevertheless, bound by the Statute. And if, on the other hand, there is a Treaty stipulation which no Statute gives the means of enforcing, the Court cannot enforce it.

Although the United States' Government insists that there is no British or Colonial Act authorizing the seizures complained of, if the British Courts should, nevertheless, find such authority in any existing Statute, the question whether the Statute itself, or the construction given it, is warranted by the Treaty, would still remain; and also the still higher question, whether, if the strict technical reading of the Treaty might be thought to warrant such a result, it is one which ought to be enforced between Sovereign and friendly nations, acting in the spirit of the Treaty.

The United States' Government must, therefore, insist that, irrespective of the future result of the Canadian legal proceedings, the authority and propriety of which is the subject of dispute, and, without waiting their conclusion, it is to Her Majesty's Government it must look for redress and satisfaction for the transactions in question, and for such instructions to the colonial authority as will prevent their repetition.

While, as I have observed, Lord Rosebery declines to discuss the question of the legality of these seizures, the able and elaborate Report on the subject from the Canadian Minister of Marine and Fisheries, which is made a part of it, attempts in very general terms to sustain their authority. He says:—

"It is claimed that the vessel (the 'David J. Adams') violated the Treaty of 1818, and consequently the Statutes which exist for the enforcement of the Treaty."

It is not clear from this language whether it is meant to be asserted that if an act, otherwise lawful, is prohibited by a Treaty, the commission of the act becomes a violation of a Statute which has no reference to it if the Statute was enacted to carry out the Treaty; or whether it is intended to say that there was in existence, prior to the seizure of the vessel in question, some Statute which did refer to the act complained of, and did authorize proceedings or provide a penalty against American fishing vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing. The former proposition does not seem to require refutation. If the latter is intended, I have

respectfully to request that your Lordship will have the kindness to direct a copy of such Act to be furnished to me. I have supposed that none such existed; and neither in the Report of the Canadian Minister, nor in the Customs Circulars or Warnings thereto appended, in which attention is called to the various legislation on the subject, is any such Act pointed out.

The absence of such Statute provision, either in the Act of Parliament (30 Geo. III, cap. 38) or in any subsequent Colonial Act, is not merely a legal objection, though quite a sufficient one, to the validity of the proceedings in question. It affords the most satisfactory evidence that, up to the time of the present controversy, no such construction has been given to the Treaty by the British or by the Colonial Parliament as is now sought to be maintained.

No other attempt is made in the Report of the Canadian Minister to justify the legality of these seizures. It is apparent from the whole of it that he recognizes the necessity of the proposed enactment of the Act of the Canadian Parliament already alluded to in order to sustain them.

This remark is further confirmed by the communication from the Marquis of Lansdowne, Governor-General of Canada, to Lord Granville in reference to that Act, annexed by Lord Rosebery to his second note to the British Minister of the 23rd July, 1886, a copy of which was sent me by his Lordship, in connection with his other note of same date above referred to.

I do not observe upon other parts of the Minister's Report not bearing upon the points of my note to Lord Rosebery. So far as they relate to the communications addressed to the British Minister by Mr. Bayard, the Secretary of State will doubtless make such reply as may seem to him to be called for.

In various other instances American vessels have been seized or driven away by the provincial authorities when not engaged or proposing to engage in any illegal employment. Some of these cases are similar to that of the "Adams;" the vessels having been taken possession of for purchasing bait or supplies to be used in lawful fishing, or for alleged technical breach of Custom-house regulations, where no harm was either intended or committed, and under circumstances in which, for a very long time, such regulations have been treated as inapplicable.

In other cases, an arbitrary extension of the 3-mile limit fixed by the Treaty has been announced, so as to include within it portions of the high sea, such as the Bay of Fundy, the Bay of Chaleur, and other similar waters, and American fishermen have been prevented from fishing in those places by threats of seizure. I do not propose, at this time, to discuss the question of the exact location of that line, but only to protest against its extension in the manner attempted by the provincial authorities.

To two recent instances of interference by Canadian officers with American fishermen, of a somewhat different character, I am specially instructed by my Government to ask your Lordship's attention—those of the schooners "Thomas F. Bayard" and "Mascot."

These vessels were proposing to fish in waters in which the right to fish is expressly secured to Americans, by the terms of the Treaty of 1818. The former in Bonne Bay, on the north-west coast of Newfoundland, and the latter near the shores of the Magdalene Islands. For this purpose the "Bayard" attempted to purchase bait in the port of Bonne Bay, having reported at the Custom-house and announced its object. The "Mascot" made a similar attempt at Port Amherst, in the Magdalene Islands, and also desired to take on board a pilot. Both vessels were refused permission by the authorities to purchase bait, and the "Mascot" to take a pilot, and were notified to leave the ports within twenty-four hours on penalty of seizure. They were therefore compelled to depart, to break up their voyages, and to return home, to their very great loss. I append copies of the affidavits of the masters of these vessels stating the facts.

Your Lordship will observe upon reference to the Treaty, not only that the right to fish in these waters is conferred by it, but that the clause prohibiting entry by American fishermen into Canadian ports, except for certain specified purposes, which is relied on by the Canadian Government in the cases of the "Adams" and of some other vessels, has no application whatever to the ports from which the "Bayard" and the "Mascot" were excluded. The only prohibition in the Treaty having reference to those ports is against curing and drying fish there, without leave of the inhabitants, which the vessels excluded had no intention of doing. The conduct of the provincial officers toward these vessels was therefore not merely unfriendly and injurious, but in clear and plain violation of the terms of the Treaty. And I am instructed to say that reparation for the losses sustained by it to the owners of the vessels will be claimed by the United States' Government on their behalf as soon as the amount can be accurately ascertained.

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It will be observed that interference with American fishing-vessels by Canadian authorities is becoming more and more frequent, and more and more flagrant in its disregard of Treaty obligations and of the principles of comity and friendly intercourse. The forbearance and moderation of the United States' Government in respect to them appear to have been misunderstood, and to have been taken advantage of by the Provincial Government. The course of the United States has been dictated not only by an anxious desire to preserve friendly relations, but by the full confidence that the interposition of Her Majesty's Government would be such as to put a stop to the transactions complained of, and to afford reparation for what loss has already taken place. The subject has become one of grave importance, and I earnestly solicit the immediate attention of your Lordship to the questions it involves, and to the views presented in my former note, and in those of the Secretary of State.

The proposal in your Lordship's note, that a revision of the Treaty stipulations bearing upon the subject of the fisheries should be attempted by the Governments upon the basis of mutual concession, is one that under other circumstances would merit and receive serious consideration. Such a revision was desired by the Government of the United States before the present disputes arose, and when there was a reasonable prospect that it might have been carried into effect. Various reasons, not within its control, now concur to make the present time inopportune for that purpose, and greatly to diminish the hope of a favourable result to such an effort. Not the least of them is the irritation produced in the United States by the course of the Canadian Government, and the belief thereby engendered that a new Treaty is attempted to be forced upon the United States' Government.

It seems apparent that the questions now presented and the transactions that are the subject of present complaint must be considered and adjusted upon the provisions of the existing Treaty, and upon the construction that is to be given to them.

A just construction of these stipulations, and such as would consist with the dignity, the interests, and the friendly relations of the two countries, ought not to be difficult, and can doubtless be arrived at.

As it appears to me very important to these relations that the collisions between the American fishermen and the Canadian officials should terminate, I suggest to your Lordship whether an *ad interim* construction of the terms of the existing Treaty cannot be reached, by mutual understanding of the Governments, to be carried out informally by instructions given on both sides, without prejudice to ultimate claims of either, and terminable at the will of either, by which the conduct of the business can be so regulated for the time being as to prevent disputes and injurious proceedings until a more permanent understanding can be had.

Should this suggestion meet with your Lordship's approval, perhaps you may be able to propose an outline for such an arrangement. I am not prepared nor authorized to present one at this time, but may hereafter be instructed to do so if the effort is thought advisable.

I have, &c.
(Signed) E. J. PHELPS.

Inclosure 1 in No. 108.

Statement of James Macdonald.

United States of America, Commonwealth of Massachusetts.

I, JAMES MACDONALD, of Gloucester, on my oath do say:—

"I am master and part owner of the schooner 'Thomas F. Bayard,' a licensed vessel of the United States; that she sailed with a permit to trade from Gloucester the 22nd June on a trip for Halibut. We fished on the north-west coast of Newfoundland near Bonne Bay, where my supply of bait being exhausted I ran into the port the 12th July, and reported at the Custom-house, stating to the Collector that my purpose was to buy bait. The Collector immediately served me with the notice hereto appended, and made part of this affidavit. I had with me a copy of the Canadian warning of the 5th March, 1886, which contained the clause 2 of the Treaty of 1818. This I showed to the Collector, and argued that I had the rights under the Treaty there set out. In substance, his reply was that he had an official duty to perform, and would not permit me. Fearing that my vessel would be seized, should I remain or should I buy bait or take it, I determined to return to Gloucester, as my trip was broken up by these threats in the notice, and the action of the Collector in refusing to recognize the rights secured my vessel by the Treaty.

"I arrived in Gloucester the 26th July: I say great losses and damages have ensued to said vessel, her owners, and crew, by reason of being warned off said coast and said Bonne Bay as will be duly made to appear.

(Signed) "JAMES MACDONALD."

Commonwealth of Massachusetts, Suffolk, s.s.

Then personally appeared the above-named James Macdonald, and made oath that this foregoing statement by him subscribed is true.

Before me,
(Signed) CHARLES G. CHICK,
Justice of the Peace.

Boston, July 28, 1886.

Inclosure 2 in No. 108.

Mr. Taylor to Captain Macdonald.

Sir,

Bonne Bay, July 12, 1886.

I AM instructed to give you notice that the presence of your vessel in this port is in violation of the Articles of the International Convention of 1818 between Great Britain and the United States in relation to fishery rights on the coast of Newfoundland and of the laws in force in this country for the enforcement of the Articles of the Convention, and that the purchase of bait or ice, or other transaction in connection with fishery operations, within 3 miles of the coasts of this Colony, will be in further violation of the terms of said Convention and laws.

I am, &c.
(Signed) N. N. TAYLOR,
Officer of Customs at

Inclosure 3 in No. 108.

Statement of Alex. McEachern.

State of Massachusetts, County of Essex.

BE it known that, on this 27th day of July, in the year of our Lord 1886, before me, Aaron Parsons, a Notary Public, duly commissioned and sworn, and dwelling at Gloucester, in county and State aforesaid, personally appeared Alex. Eachern, master of the schooner called "Mascot," of this port, who deposes and says:—

"That on the 10th day of June, 1886 A.D., I went into Port Amherst, Magdalene Islands, for the purpose of buying bait, but as soon as I went ashore I was met by the Custom-house officials, who forbid me from so doing, stating that they would seize my vessel, and I had no right to enjoy any privileges here except to get wood and water. I inform him that I wanted to take a pilot, as I could find a spot where I was informed that the fishing was good. He also said if I shipped such pilot or laid in port over twenty-four hours he would seize my vessel.

(Signed) "ALEX. McEACHERN.

"Gloucester, July 27, 1886."

Before me,
(Signed) AARON PARSONS,
Notary Public.

No. 109.

Mr. Bramston to Sir J. Pouncefote.—(Received September 17.)

Sir,

Downing Street, September 16, 1886.

WITH reference to previous correspondence relating to warnings alleged to have been given to United States fishing-vessels by the Collector of Customs at Canso, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Desleigh, a copy of a despatch from the Officer administering the Government of Canada, with its inclosures, on the subject.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 109.

Lord A. Russell to Mr. Stanhope.

Sir,

Halifax, Nova Scotia, August 21, 1886.

WITH reference to Earl Granville's despatch of the 15th July last, addressed to the Marquis of Lansdowne, requesting a Report from my Government on the subject of an inclosed note from the Secretary of State of the United States to Her Majesty's Minister at Washington, relating to certain warnings alleged to have been given to United States' fishing-vessels by the Collector of Customs at Canso, I have the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council, embodying a Report by my Minister of Marine and Fisheries on the subject.

I have, &c.

(Signed) A. G. RUSSELL, General.

Inclosure 2 in No. 109.

Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Administrator of the Government in Council on the 16th August, 1886.

[Extract sent to Sir L. West for communication to Mr. Bayard. See No. 115, post.]

THE Committee of the Privy Council have had under consideration a despatch dated the 15th July, 1886, from the Secretary of State for the Colonies, in which he asks for a Report from the Canadian Government on the subject of an inclosed note from Mr. Secretary Bayard to the British Minister at Washington, relating to certain warnings alleged to have been given to United States' fishing-vessels by the Sub-Collector of Customs at Canso.

Mr. Bayard states:—

"1. That the masters of the four American fishing-vessels of Gloucester, Mass., 'Martha C. Bradley,' 'Rattler,' 'Eliza Boynton,' and 'Pioneer,' have severally reported to the Consul-General at Halifax that the Sub-Collector of Customs at Canso had warned them to keep outside an imaginary line drawn from a point 3 miles outside Canso Head to a point 3 miles outside St. Esprit, on the Cape Breton coast.

"2. That the same masters also report that they were warned against going inside an imaginary line drawn from a point 3 miles outside North Cape in Prince Edward Island to a point 3 miles outside East Point on the same island.

"3. That the same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur."

The Minister of Marine and Fisheries, to whom the despatch and inclosures were referred, observes that the instructions issued to Collectors of Customs authorized them, in certain cases, to furnish United States' fishing vessels with a copy of the Circular hereto attached,* and which constitutes the only official "warning" Collectors of Customs are empowered to give. It was to be presumed that the Sub-Collector of Customs at Canso, as all other Collectors, would carefully follow out the instructions as received, and that therefore no case such as that alleged by Mr. Secretary Bayard would be likely to arise.

The Minister states, however, so soon as the despatch above referred to was received he sent to the Sub-Collector at Canso a copy of the allegations, and requested an immediate reply thereto.

The Sub-Collector, in answer, emphatically denies that he has ordered any American vessel out of any harbour in his district or elsewhere, or that he did anything in the way of warning except to deliver copies of the official Circular above alluded to, and states that he boarded no United States' vessel other than the "Annie Jordan" and the "Hereward," and that neither the "Martha C. Bradley," "Rattler," or "Pioneer" of Gloucester have, during the season, reported at his port of entry.

He with equal clearness denies that he has warned any United States' fishing vessels to keep outside the line from Cape North to East Point, alluded to by Mr. Secretary Bayard, or that they would not be permitted to enter Bay des Chaleurs.

The Minister has every reason to believe the statements made by the Sub-Collector at Canso, and, taking into consideration all the circumstances of the case, is of the opinion that the information which has reached the Secretary of State does not rest upon a trustworthy basis.

With reference to the concluding portion of Mr. Bayard's note, which is as follows:—

* For Circular, see p. 68.

"Such warnings are, as you must be well aware, wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction by the provincial officials.

"It becomes my duty, in bringing this information to your notice, to request that if any such orders for interference with the unquestionable rights of the American fishermen to pursue their business without molestation at any point not within 3 marine miles of the shores, and within the defined limits, as to which renunciation of the liberty to fish was expressed in the Treaty of 1818, may have been issued, the same may at once be revoked as violative of the rights of citizens of the United States under Convention with Great Britain.

"I will ask you to bring this subject to the immediate attention of Her Britannic Majesty's Government, to the end that proper remedial orders may be forthwith issued.

"It seems most unfortunate and regrettable that questions which have been long since settled between the United States and Great Britain should now be sought to be revived."

The Minister further observes that, in his opinion, the occasion of the present despatch, which has to deal mainly with questions of fact, does not render it necessary for him to enter upon any lengthened discussion of the question of headland limits.

He cannot, however, do otherwise than place upon record the earnest expression of his entire dissent from the interpretation therein sought to be placed upon the Treaty of 1818 by the United States' Secretary of State.

The Committee concur in the foregoing Report of the Minister of Marine and Fisheries, and advise that your Excellency be moved to transmit a copy thereof to Her Majesty's Secretary of State for the Colonies.

(Signed)

JOHN J. MCGEE,
Clerk, Privy Council, Canada.

No. 110.

Mr. Bramston to Sir J. Poncefots.—(Received September 17.)

Sir,

Downing Street, September 16, 1886.

WITH reference to your letter of the 28th July last, relating to protests by Mr. Bayard against the action of the Canadian authorities in regard to United States' fishing-vessels, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch from the Officer administering the Government of Canada on the subject.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 110.

Administrator Lord A. Russell to Mr. Stanhope.

Sir,

Halifax, Nova Scotia, August 21, 1886.

I CAUSED to be referred to my Government a copy of Earl Granville's despatch of the 29th ultimo, addressed to the Marquis of Lansdowne, inclosing two despatches from Her Majesty's Chargé d'Affaires at Washington, containing protests of Mr. Bayard against the action of the authorities of the Dominion in regard to certain United States' fishing-vessels.

2. I now have the honour to transmit herewith a copy of an approved Report of a Committee of the Privy Council, to which is annexed a Report by the Minister of Marine and Fisheries, relative to the circumstances under which the Secretary of State of the United States affirms that the American fishery steamer "Novelty" was not permitted to take in steam-coal, purchase ice, or tranship fish in bond to the United States at Pictou, Nova Scotia.

3. You will observe that Mr. Foster's Report deals also with Mr. Bayard's note of the 10th ultimo, relating to the alleged threats by the Customs officials of the Dominion to seize American boats coming into those waters to purchase herring from the Canadian weirs for the purpose of canning as sardines.

I have, &c.

(Signed) A. G. RUSSELL, General.

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Inclosure 2 in No. 110.

Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Administrator of the Government in Council, on the 20th August, 1886.

THE Committee of the Privy Council have had under consideration the despatch, dated the 29th July last, from Her Majesty's Secretary of State for the Colonies, inclosing two notes from Mr. Secretary Bayard to the British Minister at Washington, and asking that Her Majesty's Government be furnished with a Report upon the cases therein referred to.

The Committee respectfully submit the annexed Report from the Minister of Marine and Fisheries, to whom the said despatch and its inclosures were submitted, and they advise that your Excellency be moved to transmit a copy thereof, if approved, to Her Majesty's Principal Secretary of State for the Colonies.

(Signed)

JOHN J. MCGEE,
Clerk, Privy Council, Canada.

Inclosure 3 in No. 110.

Report.

Department of Fisheries, Ottawa, August 14, 1886.

THE Undersigned has the honour to submit the following in answer to a despatch from Lord Granville to the Governor-General under date of the 29th July last, inclosing two notes from Mr. Secretary Bayard to the British Minister at Washington, and asking that Her Majesty's Government be furnished with a Report upon the cases therein referred to.

In his first communication dated the 10th July Mr. Bayard says:—

"I have the honour to inform you that I am in receipt of a Report from the Consul-General of the United States at Halifax, accompanied by sworn testimony stating that the 'Novelty,' a duly registered merchant steam-vessel of the United States, has been denied the right to take in steam coal, or purchase ice or tranship fish in bond to the United States at Pictou, Nova Scotia.

"It appears that having reached that port on the 1st instant, and finding the Customs Office closed on account of a holiday, the master of the 'Novelty' telegraphed to the Minister of Marine and Fisheries at Ottawa, asking if he would be permitted to do any of the three things mentioned above; that he received in reply a telegram reciting with certain inaccurate and extended application and language of Article I of the Treaty of 1818 the limitations upon the significance of which are in pending discussion between the Government of the United States and that of Her Britannic Majesty; that on entering and clearing the 'Novelty' on the following day at the Customs-house, the Collector stated that his instructions were contained in the telegram the master had received, and that the privilege of coaling being denied, the 'Novelty' was compelled to leave Pictou without being allowed to obtain fuel necessary for her lawful voyage and a dangerous coast.

"Against this treatment I make instant and formal protest as an unwarranted interpretation and application of the Treaty by the officers of the Dominion of Canada and the Province of Nova Scotia, as an infraction of the laws of commercial and maritime intercourse existing between the two countries, and as a violation of hospitality, and for any loss or injury resulting therefrom, the Government of Her Britannic Majesty would be held liable."

With reference to this the Undersigned begs to observe that Mr. Bayard's statement appears to need modification in several important particulars.

In the first place, the "Novelty" was not a vessel regularly trading between certain ports in the United States and Canada, but was a fishing vessel, whose purpose was to carry on the mackerel seining business in the waters of the Gulf of St. Lawrence, around the coast of Prince Edward Island and Nova Scotia; that she had on board a full equipment of seines and fishing apparatus, and men; that she was a steam-vessel and needed coal not for purposes of cooking or warming, but to produce motive power for the vessel, and that she wished to pursue her business of fishing in the above-named waters, and to send her fares home over Canadian territory to the end that she might the more uninterruptedly and profitably carry on her business of fishing. That she was a fishing vessel and not a merchant-vessel is proved, not only by the facts above mentioned, but also

from a telegram over the signature of H. B. Joyce, the captain of the vessel, a copy of which is appended. In his telegram, Captain Joyce indicates the character of his vessel by using the words "American fishing-steamer," and he signs himself "H. B. Joyce, master of fishing-steamer 'Novelty.'"

There seems no doubt, therefore, that the "Novelty" was, in character and in purpose, a fishing-vessel, and as such comes under the provision of the Treaty of 1818, which allows United States' fishing-vessels to enter Canadian ports "for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever."

The object of the captain was to obtain supplies for the prosecution of his fishing, and to tranship his cargoes of fish at a Canadian port, both of which are contrary to the letter and spirit of the Convention of 1818.

To Mr. Bayard's statement that, in reply to Captain Joyce's inquiry of the Minister of Marine and Fisheries, "he received, in reply, a telegram reciting certain inaccurate and extended application of the language of Article I of the Treaty of 1818," the Undersigned considers it a sufficient answer to adduce the telegrams themselves.

1. Inquiry by the captain of the "Novelty":—

"From Pictou, Nova Scotia.

"Ottawa, July 1, 1886.

"Will the American fishing steamer now at Pictou be permitted to purchase coal or ice, or to tranship fresh fish in bond to United States' markets? Please answer.

(Signed) "H. B. JOYCE,
"Master of fishing steamer 'Novelty.'"

"Hon. Geo. E. Foster,
Minister of Marine and Fisheries."

2. Reply of the Minister of Marine and Fisheries thereto:—

"Ottawa, July 1, 1886.

"By terms of Treaty 1818, United States' fishing-vessels are permitted to enter Canadian ports for shelter, repairs, wood, and water, and for no other purpose whatever. That Treaty is now in force.

(Signed) "GEO. E. FOSTER,
"Minister of Marine and Fisheries."

"To H. B. Joyce, Master American
steamer 'Novelty,' Pictou, N.S."

The Undersigned fails to observe wherein any "inaccurate or extended replication" of the language of the Treaty can be found in the above answer, inasmuch as it consists of a *de facto* citation from the Treaty itself, with the added statement, for the information of the captain, that said Treaty was at that time in force. As to the "unwarranted interpretation and application of the Treaty," of which Mr. Bayard speaks, the Undersigned has already discussed that phase of the question in his Memorandum of the 14th June, which was adopted by Council, and has been forwarded to Her Majesty's Government.

Mr. Bayard's second note is as follows:—

"On the 2nd June last I had the honour to inform you that despatches from Eastport, in Maine, had been received, reporting threats by the Customs officials of the Dominion to seize American boats coming into those waters to purchase herring from the Canadian weirs, for the purpose of canning the same as sardines, which would be a manifest infraction of the right of purchase and sale of herring caught and sold by Canadians in their own waters in the pursuance of legitimate trade.

"To this note I have not had the honour of a reply."

To-day Mr. C. A. Boutelle, M.C., from Maine, informs me that "American boats visiting St. Andrew's, New Brunswick, for the purpose of there purchasing herring from the Canadian weirs for canning, had been driven away by the Dominion cruiser 'Middleton.'"

"Such inhibition of usual and legitimate commercial contracts and intercourse is assuredly without warrant of law, and I draw your attention to it in order that the commercial rights of the citizens of the United States may not be thus invaded and subjected to unfriendly discrimination."

With reference to the above, the Undersigned observes that, so far as his information goes, no Collectors of Customs or captains of cruisers have threatened to "seize American boats coming into Canadian waters to purchase herring from her Canadian weirs, for the purpose of canning them as sardines."

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Collectors of Customs have, however, in pursuance of their duties under the Customs Law of Canada, compelled American vessels coming to purchase herring to enter and clear in conformity to Customs Law.

With reference to the action of the Dominion cruiser "Middleton," the Under-signed cannot do better than quote from the official Report of the Captain of that vessel as to the facts of the case referred to. In his Report, of date the 9th July, 1886, Captain McLean, of the "General Middleton," says:—

"At 9 A.M. made sail, and drifted with the tide towards the bay. Seeing a large number of boats of various sizes hovering around the fishing weirs, I ordered the boat in waiting, and sent Officer Kent in charge, giving him instructions to row among the boats and see if there were any American purchasing fish. On the return of the boat, Chief Officer Kent reported the boats mentioned were Americans, there for the purpose of getting herring. I immediately directed the Chief Officer to return, and order the American boats to at once report themselves to the Collector of the Port and get permits to load fish, or leave without further delay. One of the boatmen complied with the request, and obtained a permit to load fish for Eastport; the others were very much disturbed on receiving the above instructions, and sailed away towards the American side of the river and commenced blowing their fog-horns, showing their contempt. Other boats at a greater distance, seeing our boat approaching, did not wait her arrival, but up sail and left for the American shore."

The above extract from the Report of the Chief Officer of the "General Middleton" goes to show that it was not his object to prevent American boats from trading in sardines, but rather to prevent them from trading without having first conformed to the Customs Law of Canada.

The whole respectfully submitted.

(Signed) **GEORGE E. FOSTER,**
Minister of Marine and Fisheries.

No. 111.

Mr. Bramston to Sir J. P. Macfote.—(Received September 17.)

Sir,

Downing Street, September 16, 1886.

WITH reference to the letter from this Department of the 28th ultimo, and to previous correspondence, respecting certain notices alleged to have been issued to American fishermen at the Magdalen Islands, and at Bonne Bay, in Newfoundland, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch from the Governor of Newfoundland on the subject.

I am, &c.

(Signed) **JOHN BRAMSTON.**

Inclosure 1 in No. 111.

Governor Sir G. Des Vœux to Mr. Stanhope.

Sir,

Government House, August 31, 1886.

REFERRING to your telegram received by me on the 21st instant, and replied to on the 24th August, I have the honour to report as follows:—

On inquiry I find that, in issuing the notices to be served on American fishermen, as reported in my despatch of the 2nd August, this Government, by an oversight, omitted in the first instance to make exception with regard to that portion of the coast on which the United States have fishing rights under the Convention of 1818.

The mistake, however, was discovered, and corrected by amended instructions to the officers concerned about three weeks before the receipt of your telegram.

So far there has been reported to me service of the notice on only two vessels, one of which (as appears from the inclosed letter of the Sub-Inspector at Bay of Islands) afterwards secured a cargo, and did not therefore probably suffer any detriment.

The other vessel (if a statement is correct which I observe in one of the American newspapers) went away empty, and therefore, I fear, may become the subject of reclamation.

I have, however, no official information on the subject, and the above report is, therefore, very possibly erroneous.

I have, &c.

(Signed) **G. WILLIAM DES VŒUX.**

Inclosure 2 in No. 111.

Mr. Barrow to Governor Sir G. Des Vaux.

Sir,

Bay of Islands, August 4, 1886.

I HAVE the honour to acknowledge the receipt of your telegram of the 2nd instant, saying: "Discontinue serving notices on American fishermen (sent 17th June) until further instructed."

I beg to state that I served a notice on the master of one United States' fishing-schooner only. She was called the "Velocipede," 64 tons, registered at Gloucester. This vessel, I hear, has since then sailed for the United States, after having done well with halibut fishing.

I shall not serve any more notices upon United States' fishermen, agreeably to your respected telegram above mentioned.

I have, &c.

(Signed) LAWRENCE BARROW, *Sub-Collector.*

No. 112.

Sir R. Herbert to Sir J. Pauncefoot.—(Received September 20.)

Sir,

Downing Street, September 18, 1886.

WITH reference to your letter of the 26th ultimo, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a telegram from the Officer administering the Government of Canada respecting the American fishing-boat "Rattler."

I am, &c.

(Signed) ROBERT G. W. HERBERT.

Inclosure in No. 112.

Governor the Marquis of Lansdowne to Mr. Stanhope.

(Telegraphic.)

September 14, 1886.

REFERRING to your telegram of the 1st September relative to fishing-boat "Rattler," facts are as follows:—

"On morning of the 4th August her captain called on Collector of Customs, Shelburne, accompanied by chief officer fishery police cutter, and reported his arrival inwards, laden with mackerel, for shelter. Afterwards chief officer informed Collector of Customs fishing-boat found previous evening at anchor 5 miles down harbour. Two men from fishery police cutter put on board, and master required conveyance to report Custom-house in the morning. Master attempted put to sea at night, but prevented by fishery police officers."

No. 113.

Sir L. West to the Earl of Iddesleigh.—(Received September 24.)

My Lord,

Washington, September 11, 1886.

I HAVE the honour to transmit herewith a copy of a note from the Secretary of State, dated the 10th instant, calling attention to the case of an American fishing-vessel, the "Mollie Adams," on account of the alleged refusal of the Collector of Customs at Port Mulgrave, Nova Scotia, to allow the master of the "Mollie Adams" to purchase barrels to hold a supply of water for the return voyage.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 113.

Mr. Bayard to Sir L. West.

Sir,

Washington, September 10, 1886.

IT is my duty to ask you to bring to the attention of Her Britannic Majesty's Government the treatment lately experienced by an American fishing-vessel, the "Mollie Adams," of Gloucester, Massachusetts, at the hands of the Collector of Customs at Port Mulgrave, in the Strait of Canso, Nova Scotia.

By the sworn statement of Solomon Jacobs, master of the schooner "Mollie Adams," it appears that on the 31st ultimo, whilst on his homeward voyage, laden with fish from the fishing banks, he was compelled to put into Port Mulgrave to obtain water, and duly made report and entry at the custom-house. The water tank of the vessel having been burst in his voyage by heavy weather and thus rendered useless, he asked permission of the Collector to purchase two or three barrels to hold a supply of water for his crew on their homeward voyage of about 500 miles.

This application was refused, and his vessel threatened with seizure if barrels were purchased. In consequence, the vessel was compelled to put to sea with an insufficient supply of water, and in trying to make some other port wherein to obtain water a severe gale was encountered, which swept away his deck-load of fish and destroyed two seine-boats.

This inhospitable, indeed inhuman, conduct on the part of the Customs officer in question should be severely reprimanded, and for the infraction of Treaty rights and commercial privileges compensation equivalent to the injuries sustained will be claimed from Her Majesty's Government.

I have, &c.

(Signed) T. F. BAYARD.

No. 114.

Sir P. Currie to Sir R. Herbert.

Sir,

Foreign Office, September 27, 1886.

I HAVE laid before the Earl of Iddesleigh your letter of the 18th instant, inclosing a copy of a telegram from the Officer administering the Government of Canada respecting the United States' fishing-boat "Rattler," and I am to acquaint you, in reply, for the information of Mr. Secretary Stanhope, that his Lordship proposes to defer taking any action in this matter until full particulars are received by despatch from Canada. His Lordship would be glad to be informed when the despatch may be expected.

I am, &c.

(Signed) P. CURRIE.

No. 115.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, September 30, 1886.

I TRANSMIT to you herewith, for communication to the United States' Secretary of State, an extract from an approved Report of the Canadian Privy Council relative to certain warnings alleged to have been given to United States' fishing-vessels by the Sub-Collector of Customs at Canso.*

The warning alluded to in this Report is the same as that inclosed in my predecessor's despatch of the 23rd July last, a copy of which you were instructed to communicate to Mr. Bayard.

I am, &c.

(Signed) IDDESLEIGH.

* See Inclosure in No. 109.

No. 116.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, September 30, 1886.

WITH reference to Mr. Hardinge's despatches of the 12th July last, inclosing copies of notes from Mr. Bayard, protesting against the action of the Canadian authorities with regard to the United States' vessel "Novelty," and the action of the Canadian cruiser "Middleton" in preventing United States' boats from visiting St. Andrews, New Brunswick, for the purpose of there purchasing herring for canning, I transmit to you herewith, for communication to Mr. Bayard, a copy of a certified Report of the Canadian Privy Council, dealing with both questions.*

I have to add that the Report in question appears to Her Majesty's Government to be a temperate and complete answer to both complaints.

I am, &c.

(Signed) IDDESLEIGH.

No. 117.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, September 30, 1886.

WITH reference to my despatch of the 4th instant, I transmit to you herewith, for your information, a copy of a letter from the Colonial Office,† inclosing a copy of a despatch from the Governor of Newfoundland on the subject of certain notices alleged to have been issued to United States' fishermen at the Magdalen Islands and Bonne Bay.

I am, &c.

(Signed) IDDESLEIGH.

No. 118.

Sir L. West to the Earl of Iddesleigh.‡—(Received October 1.)

My Lord,

Washington, September 17, 1886.

WITH reference to your Lordship's despatch of the 4th instant, I have the honour to inclose to your Lordship herewith copy of a note which I have addressed to the Secretary of State, showing the steps which have been taken in consequence of the protest of the United States' Government against the action of the authorities at Bonne Bay, Newfoundland, and Port Amherst, Magdalen Islands, in regard to United States' fishing-vessels.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 118.

Sir L. West to Mr. Bayard.

Sir,

Washington, September 17, 1886.

WITH reference to your note of the 30th July last, calling attention to alleged infractions of the Convention of 1818 by the authorities at Bonne Bay, Newfoundland, and at Port Amherst, Magdalen Islands, I have now received instructions from Her Majesty's Secretary of State for Foreign Affairs to inform you of the steps which have been taken in the matter in consequence of the protest of the United States' Government.

On the arrival of your note in London Her Majesty's Secretary of State for the Colonies telegraphed to the Officers administering the Governments of Canada and Newfoundland, calling attention to the cases, and explaining that under the Treaty of 1818 United States' fishermen have the right to fish off the coasts of the Magdalen

* No. 110.

† No. 111.

‡ Copy to Colonial Office, October 5, 1886.

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Islands and off certain coasts of Newfoundland, and stating that it was presumed that the Customs officials in those places had not been instructed in the same way as on other parts of the coast.

On the 25th ultimo the Governments of Canada and Newfoundland were further instructed by despatch from the Colonial Office to make full Reports on the subject of the complaints in question, and it was recommended that special instructions should be issued to the authorities at those places where the inshore fishery has been granted by the Convention of 1818 to United States' fishermen, calling their attention to the provisions of that Convention, and warning them that no action contrary thereto may be taken in regard to United States' fishing-vessels.

I may add that information has been received that the warning notices referred to by you were discontinued in the beginning of August.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 119.

Sir L. West to the Earl of Iddeleigh.—(Received October 4.)

My Lord,

Washington, September 24, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a further note which I have received from the Secretary of State, bringing to my attention the case of the American fishing-schooner "Crittenden," which he alleges put into Steep Creek, in the Straits of Canso, for water, and which was threatened with seizure in consequence.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 119.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, September 23, 1886.

I HAVE the honour to bring to your attention an instance which has been brought to my knowledge of an alleged denial of one of the rights guaranteed by the Convention of 1818, in the case of an American fishing-vessel.

Captain Joseph E. Graham, of the fishing-schooner "A. R. Crittenden," of Gloucester, Massachusetts, states under oath that, on or about the 21st July last, on a return trip from the open sea fishing-grounds to his home port, and while passing through the Straits of Canso, he stopped at Steep Creek for water. The Customs officer at that place told him that if he took in water his vessel would be seized; whereupon he sailed without obtaining the needed supply, and was obliged to put his men on short allowance of water during the passage homeward.

I have the honour to ask that Her Britannic Majesty's Government cause investigation to be made of the reported action of the Customs officer at Steep Creek, and, if the facts be as stated, that he be promptly rebuked for his unlawful and inhumane conduct in denying to a vessel of a friendly nation a general privilege which is not only held sacred under the maritime law of nations, but which is expressly confirmed to the fishermen of the United States throughout the Atlantic coasts of British North America by the 1st Article of the Convention of 1818.

It does not appear that the "A. R. Crittenden" suffered other damage by this alleged inhospitable treatment, but, reserving that point, the incident affords an illustration of the vexatious spirit in which the officers of the Dominion of Canada appear to seek to penalize and oppress those fishing-vessels of the United States, lawfully engaged in fishing, which from any cause are brought within their reach.

I have, &c.

(Signed) T. F. BAYARD.

No. 120.

Sir P. Currie to Sir R. Herbert.

Sir,

Foreign Office, October 4, 1886.

I AM directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington,* inclosing a copy of a note from the United States' Secretary of State, calling attention to an alleged refusal of the Collector of Customs at Port Mulgrave, Nova Scotia, to allow the master of the United States' fishing-vessel "Mollie Adams" to purchase barrels to hold a supply of water for the return voyage, and I am to request that a Report on the subject may be obtained from the Dominion Government.

I am, &c.

(Signed) P. CURRIE.

No. 121.

Sir J. Pouncefote to Sir R. Herbert.

Sir,

Foreign Office, October 6, 1886.

I AM directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of a note from the United States' Secretary of State, calling attention to the case of the United States' fishing-schooner "Crittenden," which it is alleged put into Steep Creek, in the Straits of Canso, for water, and was threatened with seizure in consequence;† and I am to request that a Report on the subject may be obtained from the Dominion Government as soon as possible.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 122.

The Earl of Iddesleigh to Mr. Phelps.

Sir,

Foreign Office, October 11, 1886.

I HAVE the honour to acknowledge the receipt of your note of the 11th ultimo on the subject of the Canadian fisheries, and I beg leave to acquaint you that the note is under the careful consideration of Her Majesty's Government, and that an answer will be returned as early as possible.

I am, &c.

(Signed) IDDESLEIGH.

No. 123.

Mr. Bramston to Sir J. Pouncefote.—(Received October 18.)

Sir,

Downing Street, October 15, 1886.

WITH reference to the letter from this Department of the 18th ultimo relating to the alleged unfriendly treatment of the United States' fishing schooner "Rattler" in Shelburne Harbour, I am directed by Mr. Secretary Stanhope to transmit to you herewith a copy of a despatch from the Officer administering the Government of Canada, inclosing a copy of a Minute by his Privy Council, with its inclosure, upon the subject.

I am to state that the despatch from the Secretary of State referred to in the papers now sent, viz., of the 1st September, was that in which your letter of the 26th August last was communicated to the Officer administering the Government of Canada, and that shortly after the receipt of your letter of the 27th September, viz., on the 5th instant, a telegram was sent to the Officer administering the Government, asking him when an answer to that despatch might be expected.

No reply has yet been received.

I am, &c.

(Signed) JOHN BRAMSTON.

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Inclosure 1 in No. 129.

Administrator Lord A. G. Russell to Mr. Stanhope.

Sir,

Halifax, Nova Scotia, September 21, 1886.

I HAVE the honour to inclose herewith a certified copy of a Minute of my Privy Council, embodying a Report of the Minister of Customs for the Dominion, in relation to the alleged improper treatment of the United States' fishing schooner "Rattler," in being required to report to the Collector of Customs at Shelburne, Nova Scotia, when seeking that harbour for shelter.

2. The reply of the Collector to the inquiries addressed to him in respect to this matter is appended to the Minister's Report, and in it the facts of the case as set forth in my telegram of the 14th instant are given.

3. I have communicated your despatch of the 1st instant, forwarding Mr. Bayard's protest concerning this case, to my Ministers, and requested to be furnished with a Report thereon, which I shall forward, for your information, as soon as it has been received.

I have, &c.

(Signed) A. G. RUSSELL, General.

Inclosure 2 in No. 129.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Administrator of the Government in Council on the 16th September, 1886.

THE Committee of Council have had before them a cablegram from the Right Honourable the Secretary of State for the Colonies, dated the 1st September, 1886, as follows:—

"Report should be made as to treatment United States' fishing-boat 'Rattler,' alleged compelled report Customs when seeking Shelburne Harbour. Despatch follows by mail."

The Minister of Customs, to whom the cablegram was referred for immediate report, caused a telegram to be forwarded to the Collector of Customs at Shelburne, to the effect that it was "stated that United States' fishing-boat 'Rattler' compelled report Customs when seeking Shelburne Harbour: what were circumstances? Answer by telegram, and report in full by mail;" and he submits the Report, dated the 6th September instant, from Mr. Attwood, the Collector of Customs at Shelburne.

The Committee advise that your Excellency be moved to cable a copy of the Report above mentioned, for the information of the Right Honourable the Secretary of State for the Colonies.

(Signed) JOHN J. McGEHE, Clerk, Privy Council.

Inclosure 3 in No. 129.

Mr. Attwood to the Commissioner of Customs, Ottawa.

Sir,

Custom-house, Shelburne, September 6, 1886.

I HAVE to acknowledge receipt of your telegram of the 4th instant relative to schooner "Rattler," and I wired an answer this morning as requested.

On the morning of the 4th ultimo Chief Officer of "Terror," accompanied by Captain A. F. Cunningham, called at this Office. Captain Cunningham reported his vessel inwards as follows, viz:—

"Schooner 'Rattler,' of Gloucester, 93 tons register, sixteen men from fishing bank, with 465 barrels mackerel, came in for shelter."

I was afterwards informed by the officer of cutter that they found the schooner the evening before at anchor off Sandy Point, 5 miles down the harbour. Two men from cutter were put on board, and the master required to report at Customs in the morning.

I was also informed that the master, Captain Cunningham, made an attempt to put to sea in the night by hoisting sails, weighing anchor, &c., but was stopped by officers from cutter.

I am, &c.

(Signed) W. W. ATTWOOD, Collector.

Mr. Bramston to Sir J. Pannecote. — (Received October 20.)

Sir, *Downing Street, October 19, 1886.*
I AM directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Iddesleigh, a copy of a despatch from the Officer administering the Government of Canada, forwarding a copy of a Customs Circular in relation to the coasting trade of the Dominion.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 124.

Administrator Lord H. Russell to Mr. Stanhope.

Sir, *Halifax, Nova Scotia, September 21, 1886.*
I HAVE the honour to inclose herewith, for your information, copy of a Circular of the Canadian Customs in relation to the coasting trade of the Dominion.
2. I understand that a general Regulation dealing with this subject is now in course of preparation by the Department of Customs for confirmation by my Privy Council. I shall take care that a copy of this document is forwarded for your information whenever it is available.

I have, &c.
(Signed) H. RUSSELL, General.

Inclosure 2 in No. 124.

Circular.

Sir, *Customs Department, Ottawa, August 14, 1886.*
NUMEROUS seizures have been recently made by officers of the Special Agent's Branch of this Department, which, with other evidence in the possession of the Department, goes to show that great laxity exists on the part of Collectors and other Customs officers in connection with traffic going on in small open boats and fishing-vessels between Canadian and foreign ports.

I am directed by the Honourable the Minister of Customs to call your attention to certain requirements of the Customs Law and Regulations bearing upon this subject, and to enjoin upon you the necessity for greater vigilance, and a stricter enforcing of the law than you have apparently been in the habit of insisting upon.

Section 38 of the Customs Act declares that it shall not be lawful, unless otherwise authorized by the Governor in Council, to import goods, wares, or merchandize from any port or place out of Canada in any vessel which has not been duly registered and has not a certificate of registry on board.

Sections 141 to 150, relating to the exportation of goods, require that any vessel outward-bound shall deliver to the Collector a proper entry and report of all goods on board, and prohibits officers giving clearances until such report and entry has been made, and fixes penalties for non-observance of these requirements.

Section 37 gives authority to the Governor in Council to make regulations respecting coasting voyages. These regulations you will find embodied in an Order in Council bearing date the 17th April, 1883: they declare what shall be considered a coasting trade, and what vessels only can be allowed to conduct such trade, viz., only British registered vessels and boats wholly owned by British subjects, and such other boats and vessels as may be owned by the subjects of countries included in any Treaty with Great Britain, by which the coasting trade is mutually conceded.

As there is no reciprocal coasting trade existing between Great Britain and the United States, United States' vessels cannot be allowed to in any manner participate in such trade.

Coasters are not permitted to go on a foreign voyage without reporting in the same manner as would be required from all vessels not coasters.

Foreign vessels or boats must not be allowed to go from place to place in Canadian

waters for the purpose of making up or seeking a cargo, as such a course would be in violation of the Coasting Regulations.

The Collector of a port may assign to such vessels a landing berth at any one place within the limits of his jurisdiction, but must not allow vessels to go from place to place in order to fill up or take in her cargo.

No permits are to be given under any circumstances by Customs officers, under cover of which, or under pretext of which, any law or regulation can be evaded.

Stringent means must be taken to confine all small or unregistered vessels to the strict limits allowed by law and regulations.

Vessels or boats of any kind or class, although of Canadian build, or owned by Canadians, which have been entered as personal property, or otherwise, and on which duty has been paid in any foreign port, must be considered strictly as foreign boats, and excluded from any rights that might attach to them had they not been so entered, as such entry changes their nationality, as much so as if they had been formally registered.

In order to insure the better protection of the revenue, it is absolutely necessary that these instructions receive your closest attention, and that all vessels, irrespective of their nationality, be required to observe the same.

(Signed) W. G. PARMELEE, Assistant Commissioner.

Collector of Customs,
Port of

No. 125.

Sir L. West to the Earl of Iddesleigh.—(Received October 23.)

My Lord,

Washington, October 12, 1886.

I HAVE the honour to acknowledge the receipt of your Lordship's despatches of the 30th ultimo, and to inform your Lordship that I have communicated to the Secretary of State copies of the certified Reports of the Canadian Privy Council dealing with the question of the 3-mile limit off Canso and with the action of the Canadian authorities with regard to the United States' vessel "Novelty" and the action of the Canadian cruiser "Middleton."

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 126.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, October 23, 1886.

WITH reference to Mr. Hardinge's despatch of the 10th August last, I transmit to you herewith a copy of a letter from the Colonial Office,* inclosing a copy of a despatch from the Officer administering the Government of Canada relative to the alleged unfriendly treatment of the United States' fishing schooner "Rat" in Shelburne Harbour; and I have to request that you will communicate a copy of the despatch from Canada to Mr. Bayard in reply to his representations on the subject.

I am, &c.

(Signed) IDDESLEIGH.

No. 127.

Mr. Bramston to Sir J. Pauncefote.—(Received October 26.)

Sir,

Downing Street, October 25, 1886.

WITH reference to your letter of the 2nd August last, inclosing copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, with a note from Mr. Bayard, protesting against the alleged action of Captain Kent, of the Dominion cruiser "General Middleton," in refusing Stephen A. Balkam permission to buy fish from Canadians, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of

Iddesleigh, a copy of a despatch from the Officer administering the Government of Canada, with its inclosure upon the subject.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 127.

Administrator Lord A. Russell to Mr. Stanhope.

Sir, *Halifax, Nova Scotia, September 25, 1886.*
WITH reference to your despatch of the 5th ultimo, transmitting a copy of a letter from the Foreign Office, with a copy of a note from Mr. Bayard, protesting against the action of Captain Kent, of the Dominion cruiser "General Middleton," in refusing Stephen A. Balkam permission to buy fish from Canadians, I have the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council, embodying a Report by my Minister of Marine and Fisheries on the subject.

I have, &c.
(Signed) A. G. RUSSELL, General.

Inclosure 2 in No. 127.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Administrator of the Government in Council on the 21st September, 1886.

THE Committee of the Privy Council have had under their consideration a despatch dated the 5th August, 1886, from the Right Honourable the Secretary of State for the Colonies, transmitting a copy of a letter from the Foreign Office with a copy of a note from Mr. Bayard, and protesting against the action of Captain Kent, of the Dominion cruiser "General Middleton," in refusing Stephen A. Balkam permission to buy fish from Canadians.

The Minister of Marine and Fisheries, to whom the despatch and inclosures were referred, submits the following Report from the first officer of the "General Middleton":—

"Halifax, August 25, 1886.

"I have the honour to state that when boarding several boats in St. Andrew's Bay I asked Stephen R. Balkam if the boat he was in was American? He replied that he thought she was. I informed him that if she was American he could not take fish from the weirs on the English side without a permit from the Collector of Customs at St. Andrew's or West Isles.

"He asked permission to take the fish from the weirs in Kelly's Cove without a permit. I declined to accede to his request.

"Mr. Balkam went around the point in his boat, and after accosting several others, I met him again evidently trying to evade my instructions. I told him that he must not take the fish without permission from the Customs. He left for the American shore, and I returned to the 'Middleton.'

"Mr. Stephen R. Balkam I have known for some years. He formerly belonged to St. Andrew's, but is now living in Eastport. His business is to carry sardines from the English side to Eastport for canning purposes."

The Minister is of opinion, in view of the above, that in warning Mr. Balkam that if his boat belonged to the United States he could not take herring from the weirs without first having reported at the custom-house, Mr. Kent acted within the scope of the law and his instructions.

The Committee respectfully advise that your Excellency be moved to transmit a copy of this Minute to the Right Honourable the Secretary of State for the Colonies, as requested in his despatch of the 5th August last.

(Signed) JOHN J. MCGEE, Clerk, Privy Council, Canada.

No. 128.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, October 30, 1886.

WITH reference to Mr. Hardinge's despatch of the 17th July last, inclosing a copy of a note from the United States' Secretary of State, protesting against the action of Captain Kent, of the Canadian cruiser "General Middleton," in expelling Stephen R. Balkam from the harbour of St. Andrew's, New Brunswick, I transmit to you herewith a copy of a letter from the Colonial Office,* inclosing a copy of a certified Report of the Privy Council for Canada upon the subject.

I have to request that you will communicate a copy of the Report to Mr. Bayard in reply to his note.

I am, &c.
(Signed) IDDESLEIGH.

No. 129.

Sir L. West to the Earl of Iddesleigh.—(Received November 1.)

My Lord,

Washington, October 20, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, bringing to the notice of Her Majesty's Government the case of the United States' fishing-vessel "Everett Steele," which is alleged to have entered the port of Shelburne, Nova Scotia, for shelter, water, and repairs, and to have been detained by the captain of the Canadian cruiser "Terror."

I have, &c.
(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 129.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, October 19, 1886.

THE "Everett Steele," a fishing-vessel of Gloucester, Massachusetts, in the United States, of which Charles E. Forbes, an American citizen, was master, was about to enter, on the 10th September, 1886, the harbour of Shelburne, Nova Scotia, to procure water and for shelter during repairs. She was hailed when entering the harbour by the Canadian cutter "Terror," by whose captain, Quigley, her papers were taken and retained. Captain Forbes, on arriving off the town, anchored, and went with Captain Quigley to the Custom-house, who asked him whether he reported whenever he had come in. Captain Forbes answered that he had reported always, with the exception of a visit on the 26th March, when he was driven into the lower harbour for shelter by a storm, and where he remained only eight hours. The Collector did not consider that this made the vessel liable, but Captain Quigley refused to discharge her; said he would keep her until he heard from Ottawa, put her in charge of policemen, and detained her until the next day, when at noon she was discharged by the Collector. But a calm having come on she could not get to sea, and by the delay her bait was spoiled and the expected profits of her trip lost.

It is scarcely necessary for me to remind you, in presenting this case to the consideration of your Government, that when the north-eastern coast of America was wrested from France in a large measure by the valour and enterprise of New England fishermen, they enjoyed, in common with other British subjects, the control of the fisheries with which that coast was enriched; and that by the Treaty of Peace of 1783, which, as was said by an eminent English Judge when treating an analogous question, was a Treaty of "Separation," this right was expressly affirmed.

It is true that by the Treaty of 1818 the United States renounced a portion of its rights in these fisheries, retaining, however, the old prerogatives of visiting the bays and harbours of the British north-eastern possessions for the purpose of obtaining wood, water, and shelter, and for objects incidental to those other rights of territoriality so retained and confirmed. What is the nature of these incidental prerogatives it is not, in considering this case, necessary to discuss. It is enough to say that Captain Forbes entered the harbour of Shelburne to obtain shelter and water; and that he had as much right to be there under the Treaty of 1818, confirming in this respect the ancient

privileges of American fishermen on those coasts, as he would have had on the high seas, carrying on, under shelter of the flag of the United States, legitimate commerce. The Government which you so honourably represent has, with its usual candour and magnanimity, conceded that when a merchant-vessel of the United States is stopped in time of peace by a British cruizer on the groundless suspicion of being a slave-trader, damages are to be paid to this Government, not merely to redress the injury suffered, but as an apology for the insult offered to the flag of the United States. But the case now presented to you is a much stronger one than that of a seizure on the high seas of a ship unjustly suspected of being a slaver. When a vessel is seized on the high seas on such a suspicion its seizure is not on waters where its rights, based on prior and continuous ownership, are guaranteed by the Sovereign making the seizure. If, in such case, the property of the owners is injured, it is, however wrongful the act, a case of rare occurrence, on seas comparatively unfrequented, with consequences not very far reaching; and if a blow is struck at a system of which such vessel is unjustly supposed to be a part, such system is one which the civilized world execrates. But seizures of the character of that which I now present to you have no such features. They are made in waters not only conquered and owned by American fishermen, but for the very purpose for which they were being used by Captain Forbes, guaranteed to them by two successive Treaties between the United States and Great Britain. These fishermen, also, I may be permitted to remind you, were engaged in no nefarious trade. They pursue one of the most useful and meritorious of industries; they gather from the seas, without detriment to others, a food which is nutritious and cheap for the use of an immense population; they belong to a stock of men which contributed before the revolution most essentially to British victories on the North-eastern Atlantic; and it may not be out of place to say, they have shown since that revolution, when serving in the navy of the United States, that they have lost none of their ancient valour, hardihood, and devotion to their flag.

The indemnity which the United States has claimed, and which Great Britain has conceded, for the visitation and search of isolated merchantmen seized on remote African seas on unfounded suspicion of being slavers, it cannot do otherwise now than claim, with a gravity which the importance of the issue demands, for its fishermen seized on waters in which they have as much right to traverse for shelter as have the vessels by which they are molested. This shelter, it is important to observe, they will as a class be debarred from, if annoyances, such as I now submit to you, are permitted to be inflicted on them by minor officials of the British provinces.

Fishermen, as you are aware, have been considered, from the usefulness of their occupation, from their simplicity, from the perils to which they are exposed, and from the small quantity of provisions and protective implements they are able to carry with them, the wards of civilized nations; and it is one of the peculiar glories of Great Britain that she has taken the position—a position now generally accepted—that even in time of war they are not to be the subjects of capture by hostile cruizers. Yet, in defiance of this immunity thus generously awarded by humanity and the laws of nations, the very shelter which they own in these seas, and which is ratified to them by two successive Treaties, is to be denied to them, not, I am confident, by the act of the wise, humane, and magnanimous Government you represent, but by deputies of deputies permitted to pursue, not uninfluenced by local rivalry, these methods of annoyance in fishing waters which our fishermen have as much right to visit on lawful errands as those officials have themselves. For let it be remembered that by annoyances and expulsions such as these, the door of shelter is shut to American fishermen as a class.

If a single refusal of that shelter such as the present is sustained, it is a refusal of shelter to all fishermen pursuing their tasks in those inhospitable coasts. Fishermen have not funds enough nor outfit enough, nor, I may add, recklessness enough, to put into harbours where, perfect as is their title, they meet with such treatment as that suffered by Captain Forbes.

To sanction such treatment, therefore, is to sanction the refusal to the United States' fishermen as a body of that shelter to which they are entitled by ancient right, by the law of nations, and by solemn Treaty. Nor is this all. That Treaty is a part of a system of mutual concessions. As was stated by a most eminent English Judge in the case of "Sutton v. Sutton" (1 Myl. and K., 675), which I have already noticed, it was the principle of the Treaty of Peace, and of the Treaties which followed between Great Britain and the United States, that the "subjects of the two parts of the divided Empire should, notwithstanding the separation, be protected in the mutual enjoyment" of the rights these Treaties affirmed. If, as I cannot permit myself to believe, Great Britain should refuse to citizens of the United States the enjoyment of the plainest and most

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undeniable of these rights, the consequences would be so serious that they cannot be contemplated by this Government but with the gravest concern.

I have, &c.

(Signed) T. F. BAYARD.

No. 130.

Sir L. West to the Earl of Iddeleigh. — (Received November 1.)

My Lord,

Washington, October 21, 1886.

IN connection with my preceding despatch, I have the honour to inclose to your Lordship herewith copy of a further note which I have received from the Secretary of State, together with copy of the document which accompanied it, drawing the attention of Her Majesty's Government to the case, as therein set forth, of the United States' fishing-vessel "Pearl Nelson," which it is alleged has been subjected to treatment by the Customs officials at Arichat, Nova Scotia, inconsistent with the international law of ordinary amity and hospitality, and also plainly violative of Treaty rights under the Convention of 1818 between Great Britain and the United States.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure 1 in No. 130.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, October 20, 1886.

PERMIT me to ask you to draw the attention of your Government to the case set forth in the inclosed affidavit of Murdoch Kemp, master of the American fishing-vessel "Pearl Nelson," of Provincetown, Massachusetts, which has been subjected to treatment by the Customs officials at Arichat, Nova Scotia, inconsistent with the international law of ordinary amity and hospitality, and also plainly violative of Treaty rights under the Convention of 1818 between Great Britain and the United States.

The vessel in question was compelled by stress of weather to seek shelter in the harbour of Arichat, Nova Scotia, and arrived late at night, when the custom-house was closed.

Before the custom-house was opened the next day the captain went there, and after waiting over an hour the Collector arrived, and the usual inward report was made, and permission asked to land the clothing of a sailor lost overboard, whose family resided in that vicinity.

He was then informed that his vessel was seized for allowing his crew to go ashore the night before, before reporting at the custom-house.

The cruel irony of this was apparent when the Collector knew such report was impossible, and that the landing of the crew was usual and customary, and that no charge of smuggling had been suggested or was possible under the circumstances.

To compel the payment of a fine, or "a deposit" of 200 dollars, which is practically the same in its results, was harsh and unwarranted, and was adding a price and a penalty to the privilege of shelter guaranteed to American fishermen by Treaty.

This vessel was a fishing-vessel, and although seeking to exercise no commercial privileges was compelled to pay commercial fees, such as are applicable to trading-vessels, but at the same time was not allowed commercial privileges.

I beg you will lose no time in representing the wrong inflicted upon an unoffending citizen of the United States, and procure the adoption of such orders as will restore the money so compelled to be deposited.

I am, &c.

(Signed) T. F. BAYARD.

Inclosure 2 in No. 130.

Affidavit of Murdoch Kemp.

Schooner "Pearl Nelson," U.S.A., District of Massachusetts.

I, MURDOCH KEMP, of Provincetown, in Massachusetts, a citizen of the United States, on my oath do say:

That I was master and part owner of the schooner "Pearl Nelson," a vessel of the

United States, duly licensed, 1886, for the fisheries, and holding a permit to touch and trade during the existence of said licence.

I further say that the crew of said vessel were shipped on wages at Provincetown and Boston for a fishing voyage to the Grand Banks and return to Provincetown for discharge. Said schooner, with licence and permit as aforesaid, sailed the 29th May, 1886, from Provincetown, and on her passage home touched at Arichat, Cape Breton, driven in there by stress of weather. Sailed by the wind from Bank Quero, and blowing fresh, a heavy sea running, and foggy, made Point Michaux, 9 miles from Arichat. The vessel was deep, her dorys floated on deck in her lee waist, wind being about west. I concluded to make a harbour and wait for better weather and wind. I anchored the vessel in Arichat Harbour at 11 P.M. 2nd September, 1886.

I had lost a man on the Grand Banks, named James Sampson, who belonged to Arichat, and I wanted to land his effects if the Customs officers would allow me to. Some of my crew belonged in that neighbourhood. William Batino, my cook, and nine others of the crew took boats off the deck and went ashore, without asking my permission. I saw them, but had never known that was any objection. I had been in this and other British North American ports frequently, and witnessed the landing from my own and other vessels' crews, but never before heard such landing was illegal or improper. These men took nothing from the vessel with them, nor carried away anything but the clothes they wore.

From the time I left Provincetown I had been into no port anywhere. Next morning, after my arrival in Arichat, at half-past 8 o'clock, I went ashore to enter at the custom-house, but found it closed. I called at 9 o'clock, and it was not open. I went again at 10 o'clock, and found the Collector opening the office door. I made the regular inward report to him, and requested permission to land the clothes of James Sampson, who had been lost from my vessel on the Grand Banks.

He told me he had sent a man for me. After I got there this man came in the office and was holding my papers, and told the man to go back and take charge of the vessel. I asked him why he held my papers? He replied he seized her because I had allowed my men to go ashore before reporting at the custom-house. That all he would tell me was, he said, he would telegraph to Ottawa and find out what to do with me, and he did telegraph immediately. About 5 o'clock P.M. the Collector received an answer, and told me to deposit 200 dollars and the vessel would be released. The Collector would not allow me to land this dead man's clothes until after I had paid the 200 dollars fine. I gave the clothes to the shopkeeper, to be given to Sampson's widow or friends. I came out of Arichat about 11 A.M. on the 8th September, 1886, having bought there one bushel of potatoes, with the Collector's permit, and arrived at Provincetown the 14th September, 1886.

I sailed from Arichat with all my crew on board, and had not at any time intended to leave any of my crew at that port. They were hired men, shipped to be discharged on return at Provincetown, and on our arrival there were all paid off and discharged.

Some of the crew that went ashore at Arichat returned aboard as early as 7 o'clock, and all were aboard about the time the vessel was seized. I gave them no money there, and had none myself.

I further say I did not enter Arichat with any intention of violating any law of the Dominion of Canada, nor for any business, but solely because of the stress of weather that had driven me there. It was mere kindness only that prompted me to offer to land Sampson's clothes there, where his friends could get them. There was no profit to the vessel, crew, or myself expected in so doing, or attempted to be gained in entering the port of Arichat other than shelter from the stress of weather we had been under from Quero Bank. If any revenue law of Canada was violated by my vessel or by myself, the same was done through ignorance and inadvertence, and not with any intention to defraud the revenue or offend the law.

Personally appeared before me Murdoch Kemp, at Provincetown, State of Massachusetts, United States of America, this 27th day of September, 1886, who subscribed and made oath to the foregoing.

(Signed) MURDOCH KEMP.

(Seal.) (Signed) JAMES GIFFORD,
Notary Public.

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No. 131.

Sir J. Pouncefote to Sir R. Herbert.

Sir,

Foreign Office, November 4, 1886.

I AM directed by the Earl of Iddesleigh to transmit to you a copy of a despatch from Her Majesty's Minister at Washington, remonstrating against the action of the Canadian authorities in detaining the United States' fishing-vessel "Everett Steele," which is alleged to have entered Shelburne Harbour for shelter, water, and repairs.*

I am to request that you will move Mr. Secretary Stanhope to ask for an immediate Report from the Canadian Government upon the circumstances of this case; and I am to suggest that the opportunity might perhaps be taken to urge upon the Dominion Government the great importance of issuing stringent instructions to all officials connected with the fisheries, to the effect that great care should be taken not to interfere with the privileges expressly reserved to American fishermen under Article I of the Convention of 1818.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 132.

Sir J. Pouncefote to Sir R. Herbert.

Sir,

Foreign Office, November 4, 1886.

I AM directed by the Earl of Iddesleigh to transmit to you, to be laid before Mr. Secretary Stanhope, a copy of a despatch from Her Majesty's Minister at Washington,† containing a Protest from Mr. Bayard against the action of the Customs officials at Arichat in the case of the American fishing vessel "Pearl Nelson;" and I am to request that the Canadian Government may be asked to furnish a report on the subject.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 133.

Mr. Bramston to Sir J. Pouncefote.—(Received November 5.)

Sir,

Downing Street, November 4, 1886.

WITH reference to the Bill passed by the Parliament of Canada at its last Session, and reserved by the Governor-General of the Dominion for the signification of Her Majesty's pleasure, entitled "An Act further to amend the Act respecting fishing by foreign vessels," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch upon the subject, which was received in this Department in August last, together with a copy of the reply which has been returned to it.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 133.

The Marquis of Lansdowne to Earl Granville.

(Extract.)

Citadel, Quebec, July 29, 1886.

I HAVE the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council in reference to the Act entitled "An Act further to amend the Act respecting fishing by foreign vessels," which was passed at its last Session by the Parliament of Canada, and which, as your Lordship will remember, was reserved by me for the signification of Her Majesty's pleasure thereon.

2. Your Lordship will observe that, for the reasons offered by the Minister of Justice,

my Government recommends that the attention of Her Majesty's Government may be drawn to the necessity for having the Royal Assent given at as early a day as possible to the Act above referred to. Your Lordship has already been fully informed of the circumstances under which this Bill was originally introduced, and which are again recurred to in the Report now submitted.

4. I inclose herewith copy of clause 17 of the Act No. 85 mentioned by the Minister, and I apprehend that there can be no doubt that should the President at any time determine to issue a Proclamation such as that contemplated in the clause, Canadian vessels would become liable to seizure and forfeiture in consequence of acts for which, as the law now stands, it might not be possible to enforce the same penalties against vessels of the United States.

Inclosure 2 in No. 133.

Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council on the 21st July, 1886.

ON a Report dated the 17th July, 1886, from the Honourable Mr. Thompson, for the Minister of Marine and Fisheries, submitting the following observations in reference to the Act entitled "An Act further to amend the Act respecting fishing by foreign vessels," which was passed at its last Session by the Parliament of Canada, and which has been reserved by your Excellency for the assent of Her Majesty the Queen.

A full and careful consideration of the subject with which the Act deals made apparent the necessity for such a measure for the enforcement, within Canadian waters, of the Statutes which have been already passed in the Imperial and Canadian Parliaments for carrying out the provisions of the Treaty of 1818 between Great Britain and the United States.

The Statute 50, Geo. III, cap. 38, provides the penalty of forfeiture as to any foreign fishing-vessels found fishing, or to have been fishing, or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, or harbours in any part of Her Majesty's dominions in America, &c.

The Canadian Act of 1868 (chapter 61), entitled "An Act respecting fishing by foreign vessels," and its amendments, followed the Imperial Act and established the same penalty for the same offences. For all other offences against the Treaty and against the Imperial Act above referred to the only penalty now provided by Statute is that mentioned in section 4 of the Imperial Act, viz., the penalty of 200*l.*, to be recovered in the Superior Courts.

The Minister has had his attention called to the fact, that the ordinary common law remedy for violation of a Statute, viz., indictment as for a misdemeanour, is an unsuitable one for such cases, because it would involve long personal imprisonment, even before trial (as the defendants would generally be foreigners without available security to offer for their appearance), and would after conviction be followed in nearly all cases by a further term of imprisonment, as the persons on whom the penalties would fall would probably be unable to bear a considerable fine.

It is obvious that the mere right to bring a suit against the masters of offending fishing-vessels is a remedy of little or no avail. Before Judgment for the 200*l.* could be obtained, the persons sued would be almost certain to be out of the jurisdiction of the Dominion Courts, and the enforcement of the Judgment would for that reason become in most cases impossible, even if the defendants possessed the means from which the Judgment could be realized.

The Minister submits that the penalty of forfeiture applied by the 2nd section of the Imperial Statute, and by the Canadian Act, to the offence of fishing, &c., would be a suitable and most available penalty for the infringement of the Statutes.

It cannot be claimed by the United States' Government to be an excessive or an unreasonable penalty, because, by Statute No. 85 of the United States' Congress, lately assented to by the President of the United States, the same penalty is established against foreign vessels, whose masters, officers, or agents do any act which may be contrary to any Proclamation issued under that Statute.

The Committee concurring in the foregoing Report, and considering the great value of the Canadian fishing-grounds, and the necessity which exists for their protection from encroachments by foreign fishermen, in order that these natural resources may be made available to our own people, recommends that the attention of Her Majesty's Government be drawn to this subject, and that representations be made as to the necessity for

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having the Royal Assent given at as early a day as possible to the Act of last Session, which is before referred to.

AL. which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE, Clerk, Privy Council.

Inclosure 3 in No. 133.

Section 17 of Bill No. 85 passed by the United States' Congress, 1886.

THAT, whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels [the coastwise trade excepted] shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is hereby authorized to issue his Proclamation excluding on and after such time as he may indicate from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such Proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country, excluded by said Proclamation from the exercise of any commercial privileges, shall do any act prohibited by said Proclamation in the ports, harbours, or waters of the United States for or on account of such vessel, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States, and any person opposing any officer of the United States in the enforcement of this Act, or aiding and abetting any other person in such opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

Inclosure 4 in No. 133.

Mr. Stanhope to the Marquis of Lansdowne.

My Lord,

Downing Street, November 4, 1886.

I HAVE the honour to acknowledge the receipt of your despatch of the 29th July last, inclosing a copy of an approved Report of your Privy Council in reference to the Bill recently passed by the Parliament of Canada, and reserved by you for the signification of Her Majesty's pleasure, entitled "An Act further to amend the Act respecting fishing by foreign vessels."

Her Majesty's Government, after having given their most attentive consideration to the question and to the views which have been urged by your Ministers, and having, moreover, had the advantage of considering the representations which you have yourself made upon the subject during your recent visit to this country, have come to the conclusion that they would not be justified in advising Her Majesty to withhold her assent from the Bill in question.

They will, therefore, be prepared to submit the Bill to Her Majesty for confirmation on receiving a transcript of it properly authenticated in the usual form.

I have, &c.

(Signed) EDWARD STANHOPE.

No. 134.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, November 5, 1886.

I HAVE received your despatches dated respectively the 20th and 21st ultimo, containing copies of notes addressed to you by Mr. Bayard concerning the action of the Canadian authorities in the cases of the American fishing-vessels "Everett Steele" and "Pearl Nelson;" and I have to request you to inform Mr. Bayard that the Dominion Government have been asked to furnish immediate Reports upon these two cases.

I am, &c.

(Signed) IDDESLEIGH.

No. 135.

Mr. Bramston to Sir J. Pouncefote.—(Received November 18.)

Sir,

Downing Street, November 17, 1886.

WITH reference to the letters noted in the margin,* relating to the cases of the United States' fishing-vessels "Rattler," "Julia Ellen," and "Shilo," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch from the Governor-General of Canada, inclosing Reports from the authorities of the Dominion in reference to these cases.

I am, &c.

(Signed)

JOHN BRAMSTON.

Inclosure 1 in No. 135.

Acting Governor Lord A. Russell to Mr. Stanhope.

Sir,

Halifax, Nova Scotia, October 29, 1886.

I HAVE the honour to forward herewith a copy of an approved Minute of the Privy Council of Canada, furnishing the Report asked for in your despatch of the 1st September last, respecting the alleged unfriendly treatment of the United States' fishing schooner "Rattler" in being required to report to the Collector of Customs at Shelburne, Nova Scotia, when seeking that harbour for shelter.

I beg also to draw your attention to the statement of the Captain of the "Terror," appended to the above Order in Council, which gives the facts concerning the cases of the "Shilo" and "Julia Ellen," a Report as to which was requested in your despatch of the 9th ultimo.

I have, &c.

(Signed)

A. G. RUSSELL, General.

Inclosure 2 in No. 135.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Administrator of the Government in Council on the 28th day of October, 1886.

THE Committee of the Privy Council have had their attention called by a cablegram from the Right Honourable Mr. Stanhope as to when he may expect answer to despatch No. 195, "Rattler."

The Honourable Mr. Bowell for the Minister of Marine and Fisheries, to whom the papers were referred, submits, for the information of his Excellency in Council, that, having considered the statements, copies of which are annexed, of Captain Quigley, of the Government cutter "Terror," and of the Collector of Customs at Shelburne, with reference to the subject-matter of the despatch, he is of opinion that these officers only performed their respective duties in the case of the "Rattler," and that no just grounds exist for the complaint put forward in Mr. Bayard's despatch of a violation of that hospitality which all civilized nations prescribe, or of a gross infraction of Treaty stipulations.

The Minister states that it does not appear at all certain from the statements submitted that this vessel put into Shelburne for a harbour in consequence of stress of weather. It does, however, appear that immediately upon the "Rattler" coming into port Captain Quigley sent his chief officer to inform the captain of the "Rattler" that before sailing he must report his vessel at the Custom-house, and left on board the "Rattler" a guard of two men to see that no supplies were landed or taken on board, or men allowed to leave the vessel during her stay in Shelburne Harbour. That at midnight the guard fired a shot as a signal to the cruiser, and the first officer at once again proceeded to the "Rattler," and found the sails being hoisted and the anchor weighed preparatory to leaving port. The captain being informed he must comply with the Customs Regulations and report his vessel, headed her up the harbour. That on the

* To Colonial Office, August 26; Colonial Office, September 18; to ditto, September 27; Colonial Office, October 15; to ditto, September 4, 1886.

way up she became becalmed, when the first officer of the "Terror" took the captain of the "Rattler" in his boat and rowed him to the town, where the Collector of Customs received his Report at the unusual hour of 6 A.M. rather than detain him, and the captain with his vessel proceeded to sea.

The Minister observes that under section 25 of the Customs Act every vessel entering a port in Canada is required to immediately report at the Customs, and the strict enforcement of this Regulation, as regards the United States' fishing-vessels, has become a necessity in view of the illegal trade transactions carried on by the United States' fishing-vessels when entering Canadian ports under pretext of their Treaty privileges.

That under these circumstances, a compliance with the Customs Act, involving only the report of a vessel, cannot be held to be a hardship or an unfriendly proceeding.

The Minister submits, in view of the repeated groundless complaints of being harshly treated that have been made during the present season by captains of United States' fishing-vessels, and in almost every instance traceable to a refusal or neglect to observe the Customs Regulations, which, it is proper to state, are enforced upon other vessels as well as those of the United States, herewith a letter written by Captain Blake, of the United States' fishing schooner "Andrew Burnham," which appeared in the Boston (Massachusetts) "Herald" of the 7th instant, and also the editorial comments thereon made in a subsequent issue of the paper referred to.

The Minister believes that the statements made by Captain Blake are strictly accurate, and as applied to other vessels are substantiated by the weekly boarding Reports received by the Fishery Department from the different captains engaged in the Fisheries Protection Service; he, the Minister, therefore, respectfully submits that the reflections of Mr. Secretary Bayard, characterizing the treatment extended to the captain of the "Rattler" as unwarrantable and unfriendly, is not merited in view of the facts as stated by Captain Quigley and Collector Attwood.

The Committee concur in the Report of the Acting Minister of Marine and Fisheries, and advise that your Excellency be moved to transmit a copy of this Minute, if approved, to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE, Clerk, Privy Council.

Inclosure 3 in No. 135.

Extract from the "Boston Herald" of October 9, 1886.

A FISHING CAPTAIN'S EXPERIENCE.—The letter of Captain Nathan F. Blake, of the fishing schooner "Andrew Burnham," of this city, which we published on Wednesday, would apparently indicate that the Canadian officials have not been disposed to push the requirements of their law quite as vigorously as some of our fishermen have maintained. Captain Blake says he has experienced not the least trouble in his intercourse with the Canadian officials, but that as he treated them courteously, they, on their side, have reciprocated in like terms. There is, undoubtedly, a great deal of bitterness felt on both sides, and probably this bitterness has led both parties to be ungracious in their own conduct, and to exaggerate the wrongs they have endured, hardships frequently due to an unwillingness to observe the requirements of the law as these are now laid down. If all American fishing captains exhibited the same courtesy and moderation that Captain Blake has shown, we imagine that there would be very little trouble in arriving at an equitable and pleasing understanding with Canada.

Inclosure 4 in No. 135.

Captain Quigley to Major Tilton.

Sir,

Shelburne, September 30, 1886.

I BEG to acknowledge the receipt of your letter of the 27th instant, requesting the circumstances connected with the boarding of the vessels "Rattler," "Julia and Ellen," and "Shilo."

In the case of the "Rattler," she came into Shelburne Harbour on the evening of the 4th August at 6 o'clock. She being at some distance from where I was anchored, and it being too rough to send my boat so far, I fired a musket signal for her to round-to, which she did, and came to an anchor alongside of my vessel.

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I then sent the chief officer to board her; he reported she put in for shelter. The captain was then told by the chief officer to report his vessel before he sailed, and that he must not let his men on shore, and that he would leave two men who are always armed on board to see that he did not otherwise break the law.

About midnight the captain hoisted his sails to leave port, thereby evading the Customs Law requiring him to report (for which I refer you to section 25 of the Customs Act), and disregarding my instructions.

The watchmen fired a signal, calling my attention to his act, when I sent the chief officer to tell him he must lower his sails and report his vessel in the morning, otherwise he would likely have his vessel detained. He did so, and sailed up in company with the chief officer at 4 o'clock A.M. On the way it fell calm, and the vessel anchored. The chief officer with my boat's crew rowed him up to the Custom-house, where he reported at 6 A.M. and returned, passing out to sea at 8 A.M. The captain was only asked to report his vessel as all others do, but was not disposed to do so.

In the case of the "Julia and Ellen," she came into the harbour of Liverpool on the 9th August about 5 P.M. Being some distance from me, I fired a blank musket shot to round her to. When she anchored I boarded her, and the captain reported that he came in for water. I told him to report his vessel in the morning, as it was then after Customs hours, and that he must not let his men ashore, and that I would leave two men on his vessel to see that my instructions were carried out, and to see that he did not otherwise break the law.

In the morning at 8 o'clock I called for the captain to go to the Custom-house, and told him his men could go on and take water while he was reporting, so that he would be all ready to sail when he returned, which they did, and he sailed at noon.

In the case of the "Shilo," she came into the harbour about 6 P.M. on the 9th August at Liverpool, and a signal was fired in her case the same as the others.

When she anchored I boarded her, and the captain reported she was in for water. I told him it was then too late to report at the Customs till morning, and that he must not allow his crew on shore, also that I would leave two men on board to see that he did not otherwise break the law, and that my instructions were carried out.

In the morning I called for the captain, when taking the "Julia and Ellen's" captain ashore. When there I told him, as I did the other, that his men could go on taking water while he was reporting, so that he could sail when he returned, and not be delayed; this they did not do.

I have reason to know that it was not water this vessel came in for, as several of the crew lived there, and it was for the purpose of letting his men ashore, and not for taking water, that he put in. He afterwards emptied six barrels of water, stating that they were sour, and fooled all day filling them, delaying the time that he might get his crew on shore. I refused to allow his crew on shore for any other purpose than to take water, after completing which, the weather being fine, I ordered him to sea in the evening.

The signals that were fired were not intended to make them come to quickly, but as a signal for them to either round-to or show their ensign.

After the "Shilo" sailed, the Harbour-master informed me that she landed two men at the mouth of the harbour 7 miles down before she reported, and the evening she sailed she called after dark and picked them up.

In many cases it is an understood thing between the captains and crews to let the men ashore and then make out they have deserted. In all cases where a vessel puts in for shelter the captain reports, and the rest of his crew are not allowed ashore, as the vessel only put in for the privilege of shelter, and for no other purpose.

When she puts in for water, after reporting, the captain is allowed to take his boats and the men he requires to procure water, and the rest remain on board, after which he is ordered to sea. When in for repairs he is allowed all the privileges he requires after reporting, and when ready, is ordered to sea. In all cases, except when in for repairs, I place men on board to see that the law is not violated, as many of those vessels put into the harbour and make taking water and seeking shelter an excuse either to get men or land them, or to allow them a chance to see their friends, or to get goods ashore if the vessel is on her way from American ports to the fishing-grounds, and have landed men here and at other ports on this coast in my absence.

In one case in this port a vessel, finding I was in the harbour, let men take a boat and land, she going on her way home to the States. That is why I put men on these vessels, to keep them from breaking the law under cover of night.

I might remark here that the Collector of Customs at Liverpool informed me that the "Shilo," on her previous voyage, remained in port five days after being ordered out, delaying for the purpose of letting the men be with their friends.

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Now that they are not allowed all the privileges they once enjoyed, it is an outrage on my part.

These are the facts connected with those vessels, which I reported to Captain Scott while in Halifax some time ago.

I treat all courteously, but firmly, and find no trouble with any but a few who wish to evade the law.

I am, &c.
(Signed) **THOMAS QUIGLEY,**
Government Cruiser "Terror."

Inclosure 5 in No. 135.

Mr. Attwood to the Commissioner of Customs, Ottawa.

Sir,
Custom-House, Shelburne, September 3, 1886.
I HAVE to acknowledge the receipt of your telegram of the 4th instant relative to schooner "Rattler," and I wired an answer this morning as requested.

On the morning of the 4th ultimo chief officer of "Terror," accompanied by Captain A. F. Cunningham, called at this Office. Captain Cunningham reported his vessel inwards as follows: viz., schooner "Rattler," of Gloucester, 93 tons register, 16 men, from fishing banks with 485 barrels mackerel came in for shelter.

I was afterwards informed by the officer of cutter that they found the schooner the evening before at anchor off Sandy Point, 5 miles down the harbour. Two men from cutter were put on board, and the master required to report at Customs in the morning. I was also informed that the master, Captain Cunningham, made an attempt to put to sea in the night, by hoisting sails, weighing anchor, &c., but was stopped by officer from cutter.

I am, &c.
(Signed) **W. H. ATTWOOD, Collector.**

Inclosure 6 in No. 135.

Extract from the "Montreal Gazette" of October 13, 1886.

A FISHERMAN'S TALE.—The following letter, which appears in the Boston "Herald," conveys a different impression to many statements that have appeared on the subject:—

"So much has been written and printed about the experiences of American fishermen in Canadian waters, and the indignities put on them, I wish you would open your columns and give your readers an insight into the other side of the story. I sailed from Boston for North Bay on the 16th June, not knowing just what the cutters would do, or how the law would be interpreted. I neared the coast with fear and anxiety. The first land sighted was Whitehead, and immediately cries came from aloft: "Cutter in sight, a-head!" I rushed to the deck, found the vessel, which proved to be the "Howlet," commanded by Captain Lowry, nearing us rapidly. At time of sighting the cutter we were standing inshore. She hoisted her flags to let us know what she was, and we immediately "about ship," and put to sea to get out of her way, for fear we might be placed on the prize-list of the captures. We finally headed up for Port Mulgrave, in Canso, expecting to receive rough usage from the authorities, but, to our surprise, found Collector Murray a perfect gentleman, willing to assist me as far as he could without encroaching on the Canadian laws. From there we put in at Port Hawkesbury, and boarded the cutter "Conrad," and asked the Captain for instructions in regard to the 3-mile limit, and what privileges, if any, we had. I was answered, in a courteous and hearty way, that he did not have them aboard, but would go ashore in a few moments and get me a printed copy of the Regulations, which he did, and assured us that if we followed them we would be unmolested; that he was there to see that the law was not violated, but not to cause unnecessary annoyance. After receiving instructions from the captain, thanks to him, I went to the Custom-house and entered my vessel, paying 25 cents. I found a very pleasant gentleman in the Collector, who did all in his power to relieve my mind and make us comfortable. Souris was our next port of landing, where we also reported and were well treated. From there we went to Malpeque, where

we found another gentleman in the Collector. We met the cutter "Howlet" at Casumpece, and had several interviews with the Commander, Captain Lowry, whom I found a quiet, just, and gentlemanly officer. My vessel was one of the fleet ordered out of harbour by him. At that time it was as good a fish day as one could ask for, and the instructions were plain that at such times we had no right to remain in harbour. At no time is there much water to spare on the bar, and it is a common occurrence for vessels to ground in going in or out, and that some did touch was due to ignorance of the channel or carelessness on the part of captains. At the time the order was issued the weather was fair, but before all the fleet could work out through the channel, one of the sudden changes in weather, so much to be dreaded on such a coast, came, and the cutter rescinded the order and the fleet returned. It has been printed in a Boston paper that, owing to being forced to sea by the cutter's orders in bad weather, my schooner, the "Andrew Burnham," fouled two Englishmen and narrowly escaped serious damage. If true, it would look like a hardship. It was simply this: In getting under way, in a small and crowded space, finding I would not have room, I dropped our starboard anchor. That not holding, we let go the other, and it brought us up all right; not much in this to point to as an outrage or danger from stress of weather. I believe Captain Lowry to be a man, who would carry out all the requirements of the Canadian Laws, but I saw nothing in my experience in those waters that could be considered as being arbitrary, or taking a mean advantage of his official authority to annoy any one. Captain Lowry has been a master of vessels for twenty-five years, is a man of high reputation as a seaman, and as good a judge of whether the weather is favourable for a vessel to go to sea as any man who walks a deck, and when he ordered the fleet to sea he went himself, and I know he would not order a vessel to leave harbour if there was any danger of loss of life or property. We reported at Casumpece, and were treated the same as at all other ports we touched at. If our vessels would attend to reporting at the Custom-house, the same as they do in our ports, no trouble would be met with.

"If we had 'free fish' it would give the Canadians some recompense for what our fishermen want, viz., the right to go anywhere and everywhere, use their harbours, ship men, get provisions, land and mend our nets, buy salt and barrels, and ship our catch home by rail or steamer without expense or annoyance, the same as we have heretofore.

"If we had had that privilege this year, myself and vessel would have been 5,000 dollars better off this season, and all the fishermen in the bay would have been in the same boat with me. I do not say that I am too honest not to fish within the 3-mile limit, nor do I believe there is a vessel in the fleet who would not, if the cutter was out of sight. I made two trips to the bay, both of which were very successful, and I lived up to the requirements of the law as well as I knew how, and did not find them obnoxious, or to interfere with my success, and everywhere I went I was courteously treated by the officials, especially so by both the cutters. Should it be a bay year next season, I hope to meet them again. Those who openly preached that they would go where they pleased, do what they wanted to in spite of law or cutters, shipped men, smuggled or openly fished inside of the limit, and indulged in the satisfaction of damning the cutter, the Captain, the Government, and everything else when they knew they could do it with impunity, and that the men they were talking to could not resent it by word or blow, were looked after sharp, and were not extended the courtesy that was shown so many of us.

"In the interest of fair play, I could not help writing you and asking you to give this to your readers, if not taking up too much of your valuable space.

"Very respectfully,
(Signed) "Capt. NATHAN F. BLAKE,
"Schooner 'Andrew Burnham,' of Boston.

"Boston, October 6, 1886."

No. 136.

Sir E. Herbert to Sir J. Poncefote.—(Received November 19.)

Sir,

I AM directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch, with its inclosure, from the Officer administering the Government of Canada, respecting the action of the Canadian

Downing Street, November 18, 1886.

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cutter "Terror" in lowering the flag of the United States' fishing schooner "Marion Grimes."

I am, &c.
(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 136.

Acting Governor Lord A. Russell to Mr. Stanhope.

Sir,

Halifax, Nova Scotia, October 27, 1886.

I HAVE the honour to transmit herewith a copy of an approved Minute of the Privy Council of Canada expressing the regret of my Government at the action of the Captain of the Canadian cutter "Terror" in lowering the United States' flag from the United States' fishing schooner "Marion Grimes," of Gloucester, Massachusetts, while that vessel was under detention at Shelburne, Nova Scotia, by the Collector of Customs at that port for an infraction of the Customs Regulations.

I have communicated a copy of this Order in Council to Her Majesty's Minister at Washington.

I have, &c.
(Signed) A. G. RUSSELL, *General.*

Inclosure 2 in No. 136.

Report of a Committee of the Honourable the Privy Council for Canada, approved by his Excellency the Administrator of the Government in Council on the 26th October, 1886.

ON a Report, dated the 14th October, 1886, from the Honourable Mackenzie Bowell, for the Minister of Marine and Fisheries, stating that on Monday, the 11th October instant, the United States' fishing schooner "Marion Grimes," of Gloucester, Massachusetts, was under detention at Shelburne, Nova Scotia, by the Collector of Customs at that port, for an infraction of the Customs Regulations, that while so detained and under the surveillance of the Canadian Government cutter "Terror" the captain of the "Marion Grimes" hoisted the United States' flag.

The Minister further states that it appears that Captain Quigley, of the "Terror," considered such act as an intimation that there was an intention to rescue the vessel, and requested Captain Landry to take the flag down. This request was complied with; an hour later, however, the flag was again hoisted, and on Captain Landry being asked if his vessel had been released and replying that she had not, Captain Quigley again requested that the flag be lowered. This was refused, when Captain Quigley himself lowered the flag, acting under the belief that while the "Marion Grimes" was in possession of the Customs authorities, and until her case had been adjudicated upon, the vessel had no right to fly the United States' flag.

The Minister regrets that he should have acted with undue zeal, although Captain Quigley may have been technically within his right while the vessel was in the custody of the law.

The Committee advise that your Excellency be moved to forward a copy of this Minute, if approved, to the Right Honourable the Secretary of State for the Colonies and to Her Majesty's Minister at Washington, expressing the regret of the Canadian Government at the occurrence.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE, *Clerk, Privy Council.*

No. 137.

Mr. Bramston to Sir J. Pauncefoot.-(Received November 20.)

Sir,

Downing Street, November 19, 1886.

WITH reference to the correspondence noted in the margin,* respecting the action of the Customs officer at Magdalene Island in the case of the United States' fishing-

* Nos. 92 and 99.

vessel "Mascotte," I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Idlesleigh, a copy of a despatch, with its inclosure, from the Officer administering the Government of Canada on the subject.

I am to point out that the concluding paragraph of Sir L. West's note to Mr. Bayard of the 17th September should have referred to the case of Newfoundland only.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 137.

Acting Governor Lord A. Russell to Mr. Stanhope.

Sir,

Halifax, Nova Scotia, October 30, 1886.

WITH reference to your telegraphic message of the 22nd August, and to your despatch of the 25th August, transmitting copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, with a note from Mr. Bayard complaining of the action of the Customs officer at Magdalen Islands, with reference to the American fishery schooner "Mascotte," I have the honour to forward herewith a copy of an approved Minute of the Privy Council of Canada, embodying a Report of the Minister of Marine and Fisheries on the subject.

I have, &c.

(Signed) A. G. RUSSELL, *General.*

Inclosure 2 in No. 137.

Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Administrator of the Government in Council for Canada on the 30th day of October, 1886.

THE Committee of the Privy Council have had under consideration a telegram of the 22nd August and a despatch of the 25th August last, from the Right Honourable the Secretary of State for the Colonies, transmitting copy of a letter from Her Majesty's Minister at Washington, inclosing a note from Mr. Secretary Bayard, complaining of the action of the Customs officer at Magdalen Islands, with reference to the American fishing schooner "Mascotte."

The Minister of Marine and Fisheries, to whom the correspondence was referred, observes that Mr. Bayard, in his note to the British Minister at Washington says:—

"I am also in possession of the affidavit of Alex. T. Vachem, master of the American fishing schooner 'Mascotte,' who entered Port Amherst, Magdalen Islands, and was there threatened by the Customs official with seizure of his vessel, if he attempted to obtain bait for fishing or take a pilot."

And from a Report of the Customs officer at Magdalen Islands, a copy of which, so far as it relates to the case in point, is hereto annexed, it appears that no grounds exist for the complaint made by the master of the "Mascotte."

The Minister states that Captain Vachem was served with a printed copy of the "warning," and was, in addition, informed by the Collector that under the Treaty of 1818 he had no right to buy bait or to ship men. He was not forbidden to take fish, but, on the contrary, the Collector pointed out to him on the Chart the places in which, by the Convention of 1818, he, as a United States' fisherman, had the right to inshore fishing, and one of the places so pointed out to him was the Magdalen Islands.

Notwithstanding the "warning" and the personal explanation of the Collector, it appears that Captain Vachem did go up the country and attempt to hire men, and upon his return informed the Collector that he could not get any. For this, clearly an illegal act, he was not interfered with by the Collector.

The Minister further observes that the Convention of 1818, while it grants to United States' fishermen the right of fishing in common with British subjects on the shores of the Magdalen Islands, does not confer upon them privileges of trading or of shipping men, and it was against possible acts of the latter kind, and not against fishing inshore, or seeking the rights of hospitality guaranteed under the Treaty, that Captain Vachem was warned by the Collector.

With reference to the remarks of the Colonial Secretary that "Her Majesty's Government would recommend that special instructions should be issued to the autho-

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rities at the places where the inshore fishery has been granted by the Convention of 1818 to the United States' fishermen, calling their attention to the provisions of that Convention, and warning them that no action contrary thereto may be taken in regard to United States' fishing-vessels," the Minister states that the Circular instructions issued to Collectors of Customs recite the Articles of the Convention of 1818, which grant to United States' fishermen the right to take fish upon the shores of the Magdalen Islands, and of certain parts of the coasts of Labrador and Newfoundland, which instructions the Collector in question had received, and the import of which his Report shows him to be familiar with.

In addition to this the Commander of the fishery protection steamer "La Canadienne" was ordered to visit Magdalen Islands and explain fully to Collectors there the extent of their powers.

The Minister, in view of these instructions, printed and oral, does not deem it necessary to send further special orders.

The Committee concurring in the foregoing Report advise that your Excellency be moved to transmit a copy hereof, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE, Clerk, Privy Council.

Inclosure 3 in No. 137.

Mr. Poinchaud to the Minister of Marine and Fisheries.

Sir,

Custom-house, Magdalen Islands, August 28, 1886.

I BEG to acknowledge the receipt of your telegram respecting captain of the schooner "Mascotte's" report in reference to my having threatened him with seizure.

I replied, on receipt: "'Mascotte,' information incorrect. Particulars per mail Tuesday."

Particulars.—On arrival of the captain I served him a "warning," personally informed him he could not buy [? bait] or ship men.

I say this to all American fishermen. He tried, however, to hire, went up the country to hire, but could not hire a man.

I saw him and men go up, and on his return he told me he could not hire. I did not oppose him. He intended halibutting at Seven Islands Dominion. I found this out since. I deny having said I would seize him if he obtained bait, himself or crew. I did not use the term, but it suits the captain or owners to use it as it serves their meaning to make the report good.

I particularly showed him where, on the Chart, he had the right to fish inshore, to wit: at the Magdalen Islands, Cape Ray, &c., as per Treaty in my hands then.

I think I was very lenient with him and all American fishermen calling here, knowing their privileges.

I treated them so gentlemanly that I am surprised to hear he made the above inaccurate report to you.

Yours, &c.

(Signed) J. B. F. POINCHAUD,
Collector of Customs.

No. 138.

Sir L. West to the Earl of Idlesleigh.—(Received November 21.)

My Lord,

Washington, November 9, 1886.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 30th ultimo, and to inform your Lordship that, in obedience to the instructions therein contained, I have communicated to the Secretary of State a copy of the certified Report of the Privy Council for Canada on his note of the 16th July last, protesting against the action of Captain Kent, of the Canadian cruiser "General Middleton," in expelling Stephen R. Balkham from the harbour of St. Andrew's, New Brunswick.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

No. 139.

Sir R. Herbert to Sir J. Pauncefoot.—(Received November 23.)

Sir,

Downing Street, November 23, 1886.

WITH reference to your letters of the 4th instant, respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing-vessels "Pearl Nelson" and "Everett Steele," I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Iddesleigh, a copy of a telegram which he addressed to the Governor-General of Canada requesting a report on the subject.

Copies of your letters, with inclosures, will be duly forwarded to Lord Lansdowne by the next mail.

I am, &c.

(Signed)

ROBERT G. W. HERBERT.

Inclosure in No. 139.

Mr. Secretary Stanhope to the Marquis of Lansdowne.

(Telegraphic.)

Downing Street, November 6, 1886.

UNITED STATES' Government protest against proceedings of Canadian authorities in case of "Pearl Nelson" and "Everett Steele," said to have put into Arichat and Shelburne respectively for purposes sanctioned by Convention. Particulars by post. Send Report as soon as possible.

No. 140.

Sir L. West to the Earl of Iddesleigh.—(Received November 26.)

My Lord,

Washington, November 12, 1886.

I HAVE the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, together with copies of the statements accompanying it, describing the inhospitable and inhuman conduct of the Collector of the port of Shelburne, Nova Scotia, and the conduct of Captain Quigley, commanding the Canadian cruiser "Terror," in their dealings with the American fishing-vessels "Laura Sayward" and "Jennie Seaverns."

I have, &c.

(Signed)

L. S. SACKVILLE WEST.

Inclosure 1 in No. 140.

Mr. Bayard to Sir L. West.

Sir,

Department of State, Washington, November 11, 1886.

I HAVE the honour to inclose herewith copies of the statements with affidavits from Captain Medeo Rose, master of the schooner "Laura Sayward," of Gloucester, Massachusetts, and of Captain Joseph Tupper, master of the schooner "Jennie Seaverns," also of Gloucester, forwarded to me by the Collector of the port of Gloucester, under date of 5th instant.

The first impressively describes the inhospitable and inhuman conduct of the Collector of the port of Shelburne, Nova Scotia, in refusing to allow Captain Rose to buy sufficient food for himself and crew to take them home, besides unnecessarily retaining his papers, and thus preventing him, with a wholly inadequate supply of provisions, from proceeding on his voyage.

The second complaint is of Captain Quigley, commanding the Canadian cruiser "Terror," in not only preventing Captain Tupper from landing to visit his relatives in Liverpool, Nova Scotia, but even forbidding his relatives from coming on board his vessel to see him, and likewise placing a guard on board of her to insure that result.

While I need not comment further than I have already done in previous notes on

the unjust and unwarrantable acts of the Dominion officials of late towards our fishermen, of which the instances now presented are but repetitions, I must notice the new phase of Captain Quigley's abuse of authority in actually making Captain Tupper a prisoner on board of his own vessel, and in preventing his relatives, whom he states he had not seen for many years, from meeting him.

Such conduct, apart from all its legal and international aspects, is wholly unworthy of any one intrusted with the execution of a public duty, and inconsistent with the national reputation for humanity and courtesy of an officer in Her Majesty's Service.

I have, &c.

(Signed) T. F. BAYARD.

Inclosure 2 in No. 140.

Affidavit of Medeo Rose.

I, MEDEO ROSE, master of schooner "Laura Sayward," of Gloucester, being duly sworn, do depose and say, that on Saturday, the 2nd October, being then on Western Bank on a fishing trip, and being short of provisions, we hove up our anchor and started for home. The wind was blowing almost a gale from the north-west, and being almost dead ahead we made slow progress on our voyage home. On Tuesday, the 5th October, we made Shelburne, Nova Scotia, and arrived in that harbour about 8 p.m. on that day, short of provisions, water, and oil to burn. On Wednesday I sailed for the inner harbour of Shelburne, arriving at the town about 4 p.m. On going ashore I found the Custom-house closed, and hunted up the Collector and entered my vessel, and asked permission from him to buy 7 lbs. of sugar, 3 lbs. of coffee, $\frac{1}{2}$ to 1 bushel of potatoes, and 2 lbs. of butter, or lard, or pork, and oil enough to last us home, and was refused. I stated to him my situation, short of provisions and a voyage of 250 miles before us, and plead with him for this slight privilege, but of no avail. I then visited the American Consul, and asked his assistance, and found him powerless to aid me in this matter. The Collector of Customs held my papers until the next morning, although I asked for them as soon as I found I could not buy any provisions, say, about an hour and a-half after I entered, but he refused to give them to me until the next morning. Immediately on receiving my papers on Thursday morning, I started for home, arriving on Sunday. I think the treatment I received harsh and cruel, driving myself and crew to sea with a scant supply of provision, we having but little flour and water, and liable to be buffeted about for days before reaching home.

(Signed) MEDEO ROSE.

Mass., Essex, s.s.

Personally appeared Medeo Rose and made oath to the truth of the above statement.

Before me,

(Seal)

(Signed)

AARON PARSONS, N.P.

October 13, 1886.

Inclosure 3 in No. 140.

Affidavit of Joseph Tupper.

I, JOSEPH TUPPER, master of schooner "Jennie Seaverns," of Gloucester, being duly sworn, do depose and say, that on Thursday, the 28th October, while on my passage home from a fishing trip, the wind blowing a gale from south-east, and a heavy sea running, I was obliged to enter the harbour of Liverpool, Nova Scotia, for shelter. Immediately on coming to anchor was boarded by Captain Quigley, of Canadian cruiser "Terror," who ordered me to go on shore at once and enter at the Custom-house, to which I replied that such was my intention.

He gave me permission to take two men in the boat with me, but they must remain in the boat, and not step on shore. I asked Captain Quigley if I could, after entering, visit some of my relations who resided in Liverpool, and whom I had not seen for many years. This privilege he denied me; after entering, having returned to my vessel, some of my relatives came off to see me. When Captain Quigley saw their boat alongside of my vessel he sent an officer and boat's crew, who ordered them away, and at sun-down he

placed an armed guard on board our vessel who remained on board all night, and was taken off just before we sailed in the morning.

I complied with the Canadian laws, and had no intention or desire to violate them in any way, but to be made a prisoner on board my own vessel, and treated like a suspicious character, grates harshly upon the feelings of an American seaman, and I protest against such treatment, and respectfully ask from my own Government protection from such unjust, unfriendly, and arbitrary treatment.

(Signed) JOSEPH TUPPER.

Mass., Essex, s.s.

Personally appeared Joseph Tupper and made oath to the truth of the above statement.

Before me,

(Seal) (Signed) AARON PARSONS, N.P.

November 4, 1886.

No. 141.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, November 26, 1886.

I TRANSMIT to you a copy of a letter from the Colonial Office, inclosing a copy of a despatch from the Governor-General of Canada, with copies of Reports from the Dominion authorities, relative to the causes of complaint alleged by the masters of the United States' fishing-vessels "Rattler," "Shiloh," and "Julia Ellen," against Captain Quigley, of the Canadian cruiser "Terror."

I have to request that you will communicate a copy of the Governor-General's despatch, with its inclosures, to the Secretary of State of the United States, in reply to the notes which he addressed to Mr. Hardinge and to you, on the subject on the 9th and 18th August last, copies of which notes were inclosed in Mr. Hardinge's despatch of the 10th August, and in your despatch of the 10th August, respectively.

I am, &c.

(Signed) IDDESLEIGH.

No. 142.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, November 26, 1886.

WITH reference to my despatch of the 4th September last, I transmit to you herewith a copy of a letter from the Colonial Office, inclosing a copy of a despatch, with its inclosures, from the Officer administering the Government of Canada, respecting the action of the Customs officer at Magdalene Island in the case of the United States' fishing-vessel "Mascotte;"† and I have to request that you will communicate a copy of the despatch, with its inclosures, to the United States' Secretary of State.

I am, &c.

(Signed) IDDESLEIGH.

No. 143.

The Earl of Iddesleigh to Sir L. West.

Sir,

Foreign Office, November 26, 1886.

I TRANSMIT to you herewith a copy of a letter from the Colonial Office, inclosing a copy of a despatch, with its inclosure, from the Officer administering the Government of Canada, expressing the regret of the Dominion Government at the action of the Captain of the Canadian cutter "Terror," in lowering the United States' flag from the

* No. 135.

† No. 137.

United States' fishing-schooner "Marion Grimes," of Gloucester, Massachusetts, while that vessel was under detention at Shelburne, Nova Scotia;* and I have to request that you will communicate a copy of the despatch, with its inclosure, from the Officer administering the Government of Canada to the Secretary of State of the United States.

I am, &c.
(Signed) IDDESLEIGH.

No. 144.

Sir R. Herbert to Sir J. Pauscote.—(Received November 27.)

Sir,

Downing Street, November 25, 1886.

I AM directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Idlesleigh, a copy of a despatch from the Governor-General of Canada, forwarding an authenticated copy of the Reserved Act passed by the Dominion Parliament, entitled "An Act further to amend the Act respecting Fishing by Foreign Vessels."

I am to add that this Act will be submitted for the Queen's Assent at the next Council.

I am, &c.
(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 144.

The Marquis of Lansdowne to Mr. Stanhope.

Sir,

Government House, Ottawa, November 9, 1886.

IN accordance with the request contained in your telegram of the 2nd instant, I have the honour to forward herewith a certified copy of the Bill entitled "An Act further to amend the Act respecting Fishing by Foreign Vessels," which was passed by the Parliament of Canada last Session.

I have, &c.
(Signed) LANSDOWNE.

Inclosure 2 in No. 144.

(L.S.)

Office of the Clerk of the Parliaments.

I, EDOUARD JOSEPH LANGEVIN, Clerk of the Parliaments, Custodian of the Statutes of the Legislatures of the late Provinces of Upper and Lower Canada, of the late Province of Canada, and of the Parliament of Canada, certify the subjoined to be a true copy of the original Act passed by the Parliament of Canada, in the Session thereof held in the 49th year of Her Majesty's reign, and reserved by the Governor-General on Wednesday, the 2nd day of June, 1886, for the signification of Her Majesty's pleasure thereon.

Given under my hand and seal, at the city of Ottawa, Canada, on the 3rd day of November, 1886.

(Signed) EDOUARD G. LANGEVIN,
Clerk of the Parliaments.

An Act further to Amend the Act respecting Fishing by Foreign Vessels.

Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to further amend the Act intituled "An Act respecting Fishing by Foreign Vessels," passed in the 31st year of Her Majesty's reign, and chaptered 61: therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The section substituted by the 1st section of the Act 33 Vict., cap. 15,

* Inclosures in No. 136.

entitled "An Act to amend the Act respecting Fishing by Foreign Vessels," for the 3rd section of the hereinbefore-recited Act, is hereby repealed, and the following section substituted in lieu thereof:—

3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat, being within any harbour in Canada, or hovering in British waters within 3 marine miles of any of the coasts, bays, creeks, or harbours in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination he shall incur a penalty of 400 dollars; and if such ship, vessel, or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (a) has been found fishing or preparing to fish, or to have been fishing in British waters within 3 marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the term named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act; or (b) has entered such waters for any purpose not permitted by Treaty or Convention, or by any Law of the United Kingdom or of Canada for the time being in force, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited."

2. The Acts mentioned in the schedule hereto are hereby repealed.

3. This Act shall be construed as one with the said "Act respecting Fishing by Foreign Vessels" and the amendments thereto.

SCHEDULE.

ACTS of the Legislature of the Province of Nova Scotia.

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
Revised Statutes, 3rd Series, cap. 94	Of the Coast and Deep-Sea Fisheries	The whole.
29 Vic. (1866), cap. 36 ..	An Act to amend Chapter 94 of the Revised Statutes, "Of the Coast and Deep-Sea Fisheries"	The whole.

Act of the Legislature of the Province of New Brunswick.

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
16 Vic. (1853), cap. 69 ..	An Act relating to the Coast Fisheries and for the Prevention of Illicit Trade	The whole.

No. 145.

Mr. Phelps to the Earl of Iddesleigh.—(Received November 26.)

My Lord,

Legation of the United States, London, November 27, 1886.

I HAVE the honour to transmit herewith a copy of an instruction, under date of the 6th November, 1886, received by me from the Secretary of State of the United States, relative to the case of the United States' fishing-vessel the "Marion Grimes."

The subject is so fully presented in this document, a copy of which I am authorized by the Secretary to place in the hands of your Lordship, that I can add nothing to what is therein set forth, except to request your Lordship's early attention to the case, which appears to be a very flagrant violation of the rights secured to American fishermen under the Treaty of 1818.

I have, &c.

(Signed) E. J. PHELPS.

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Inclosure 1 in No. 145.

Mr. Bayard to Mr. Phelps.

Sir,

Department of State, Washington, November 6, 1886.

ON October 7, 1886, the United States' fishing-vessel, the "Marion Grimes," of Gloucester, Massachusetts, Alexander Landry, a citizen of the United States, being her captain, arrived shortly before midnight, under stress of weather, at the outer harbour of Shelburne, Nova Scotia. The night was stormy, with a strong head-wind against her, and her sole object was temporary shelter. She remained at the spot where she anchored, which was about 7 miles from the port of Shelburne, no one leaving her until 6 o'clock the next morning, when she hoisted sail in order to put to sea. She had scarcely started, however, before she was arrested and boarded by a boat's crew from the Canadian cruiser "Terror." Captain Landry was compelled to proceed to Shelburne, about 7 miles distant, to report to the Collector. When the report was made Captain Landry was informed that he was fined 400 dollars for not reporting on the previous night. He answered that the custom-house was not open during the time that he was in the outer harbour. He further insisted that it was obvious from the storm that caused him to take shelter in that harbour, from the shortness of his stay, and from the circumstances that his equipments were exclusively for deep-sea fishing, and that he had made no effort whatever to approach the shore, that his object was exclusively to find shelter. The fine, however, being imposed principally through the urgency of Captain Quigley, commanding the "Terror," Captain Landry was informed that he was to be detained at the port of Shelburne until a deposit to meet the fine was made. He consulted Mr. White, the United States' Consular Agent at Shelburne, who at once telegraphed the facts to Mr. Phelan, United States' Consul-General at Halifax, it being of great importance to Captain Landry, and to those interested in his venture, that he should proceed on his voyage at once. Mr. Phelan then telegraphed to the Assistant-Commissioner of Customs at Ottawa that it was impossible for Captain Landry to have reported while he was in the outer harbour on the 8th instant, and asking that the deposit required to release the vessel be reduced. He was told, in reply, that the Minister declined to reduce the deposit, but that it might be made at Halifax. Mr. Phelan at once deposited at Halifax the 400 dollars, and telegraphed to Captain Landry that he was at liberty to go to sea. On the evening of the 11th October Mr. Phelan received a telegram from Captain Landry, who had already been kept four days in the port, stating that "the Custom-house officers and Captain Quigley" refused to let him go to sea. Mr. Phelan the next morning called on the Collector at Halifax to ascertain if an order had issued to release the vessel, and was informed that the order had been given, "but that the Collector and Captain of the cruiser refused to obey it for the reason that the captain of the seized vessel hoisted the American flag while she was in custody of Canadian officials." Mr. Phelan at once telegraphed this state of facts to the Assistant Commissioner at Ottawa, and received, in reply, under date of the 12th August, the announcement that "Collector has been instructed to release the 'Grimes' from Customs seizure. This Department has nothing to do with other charges." On the same day a despatch from the Commissioner of Customs at Ottawa was sent to the Collector of Customs at Halifax reciting the order to release the "Grimes," and saying "this [the Customs] Department has nothing to do with other charges. It is Department of Marine."

The facts as to the flag were as follows:—

On the 11th October the "Marion Grimes," being then under arrest by order of local officials for not immediately reporting at the custom-house, hoisted the American flag. Captain Quigley, who, representing, as appeared, not the Revenue, but the Marine Department of the Canadian Administration, was, with his "cruizer," keeping guard over the vessel, ordered the flag to be hauled down. This order was obeyed, but about an hour afterwards the flag was again hoisted, whereupon Captain Quigley boarded the vessel with an armed crew and lowered the flag himself. The vessel was finally released under orders of the Customs Department, being compelled to pay 8 dollars costs in addition to the deposit of 400 dollars above specified.

The seriousness of the damage inflicted on Captain Landry and those interested in his venture will be understood when it is considered that he had a crew of twelve men, with full supplies of bait, which his detention spoiled.

You will at once see that the grievances I have narrated fall under two distinct heads. The first concerns the boarding by Captain Quigley of the "Marion Grimes" on the morning of the 8th October, and compelling her to go to the town of Shelburne,

there subjecting her to a fine of 400 dollars for visiting the port without reporting, and detaining her there arbitrarily four days, a portion of which time was after a deposit to meet the fine had been made.

This particular wrong I now proceed to consider with none the less gravity, because other outrages of the same class have been perpetrated by Captain Quigley. On the 18th August last I had occasion, as you will see by the annexed papers, to bring to the notice of the British Minister at this capital several instances of aggression on the part of Captain Quigley on our fishing-vessels. On the 19th October, 1886, I had also to bring to the British Minister's notice the fact that Captain Quigley had, on the 10th September, arbitrarily arrested the "Everett Steele," a United States' fishing-vessel, at the outer port of Shelburne. To these notes I have received no reply. Copies are transmitted, with the accompanying papers, to you, in connection with the present instruction, so that the cases, as part of a class, can be presented by you to Her Majesty's Government.

Were there no Treaty relations whatever between the United States and Great Britain,—were the United States' fishermen without any other right to visit those coasts than are possessed by the fishing craft of any foreign country simply as such, the arrest and boarding of the "Creole," as above detailed, followed by forcing her into the port of Shelburne, there subjecting her to fine for not reporting, and detaining her until her bait and ice were spoiled, are wrongs which I am sure Her Majesty's Government will be prompt to redress. No Governments have been more earnest and resolute in insisting that vessels driven by stress of weather into foreign harbours should not be subject to port exactions than the Governments of Great Britain and the United States. So far has this solicitude been carried that both Governments, from motives of humanity, as well as of interest as leading Maritime Powers, have adopted many measures by which foreigners as well as citizens or subjects arriving within their territorial waters may be protected from the perils of the sea. For this purpose not merely light-houses and light-ships are placed by us at points of danger, but an elaborate life-saving service, well equipped with men, boats, and appliances for relief, studs our seaboard in order to render aid to vessels in distress, without regard to their nationality. Other benevolent organizations are sanctioned by Government which bestow rewards on those who hazard their lives in the protection of life and property in vessels seeking in our waters refuge from storms. Acting in this spirit the Government of the United States has been zealous, not merely in opening its ports freely, without charges to vessels seeking them in storm, but in insisting that its own vessels, seeking foreign ports under such circumstances, and exclusively for such shelter, are not under the law of nations subject to Custom-house exactions. "In cases of vessels carried into British ports by violence or stress of weather," said Mr. Webster in instructions to Mr. Everett, the 28th June, 1842, "we insist that there shall be no interference from the land with the relation or personal condition of those on board, according to the laws of their own country; that vessels under such circumstances shall enjoy the common laws of hospitality, subjected to no force, entitled to have their immediate wants and necessities relieved, and to pursue their voyage without molestation." In this case, that of the "Creole," Mr. Wheaton, in the "Revue Française et Étrangère" (IX, 345), and M. Legaré (4 Op. At. Gen., 98), both eminent publicists, gave opinions that a vessel carried by stress of weather or forced into a foreign port is not subject to the law of such port; and this was sustained by Mr. Bates, the Umpire of the Commission, to whom the claim was referred (Rep. Com. of 1863; 244, 245); "The municipal law of England [so he said] cannot authorize a Magistrate to violate the law of nations by invading with an armed force the vessel of a friendly nation that has committed no offence, and forcibly dissolving the relations which, by the laws of his country, the captain is bound to preserve and enforce on board. These rights, sanctioned by the law of nations, viz., the right to navigate the ocean and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers, the law of her country, must be respected by all nations, for no independent nation would submit to their violation."

It is proper to state that Lord Ashburton, who conducted the controversy in its diplomatic stage on the British side, did not deny, as a general rule, the propositions of Mr. Webster. He merely questioned the applicability of the rule to the case of the "Creole." Nor has the principle ever been doubted by either Her Majesty's Government or the Government of the United States; while, in cases of vessels driven by storm on inhospitable coasts, both Governments have asserted it, sometimes by extreme measures of redress, to secure indemnity for vessels suffering under such circumstances from port exactions, or from injuries inflicted from the shore.

It would be hard to conceive of anything more in conflict with the humane policy of

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Great Britain in this respect, as well as with the law of nations, than was the conduct of Captain Quigley towards the vessel in question on the morning of the 8th October.

In such coasts, at early dawn, after a stormy night, it is not unusual for boats, on errands of relief, to visit vessels which have been struggling with storm during the night. But in no such errand of mercy was Captain Quigley engaged. The "Marion Grimes," having found shelter during the night's storm, was about to depart on her voyage, losing no time while her bait was fresh and her ice lasted, when she was boarded by an armed crew, forced to go 7 miles out of her way to the port, and was there under pressure of Captain Quigley, against the opinion originally expressed of the Collector, subjected to a fine of 400 dollars with costs, and detained there, as I shall notice hereafter, until her voyage was substantially broken up. I am confident Her Majesty's Government will concur with me in the opinion that, as a question of international law, aside from Treaty and other rights, the arrest and detention under the circumstances of Captain Landry and of his vessel were in violation of the law of nations as well as the law of humanity, and that on this ground alone the fine and the costs should be refunded and the parties suffering be indemnified for their losses thereby incurred.

It is not irrelevant, on such an issue as the present, to inquire into the official position of Captain Quigley, "of the Canadian cruiser 'Terror.'" He was, as the term "Canadian cruiser" used by him enables us to conclude, not an officer in Her Majesty's distinctive service. He was not the Commander of a Revenue cutter, for the Head of the Customs Service of Canada disavowed him. Yet he was arresting and boarding, in defiance of law a vessel there seeking shelter, over influencing the Collector of the port into the imposition of a fine, hauling down with his own hand the flag of the United States, which was displayed over the vessel, and enforcing arbitrarily an additional period of detention after the deposit had been made, simply because the captain of the vessel refused to obey him by executing an order insulting to the flag which the vessel bore. If armed cruisers are employed in seizing, harassing, and humiliating storm-bound vessels of the United States on Canadian Coasts, breaking up their voyages and moulting them with fines and costs, it is important, for reasons presently to be specified, that this Government should be advised of the fact.

From Her Majesty's Government redress is asked. And that redress, as I shall have occasion to say hereafter, is, not merely the indemnification of the parties suffering by Captain Quigley's actions, but his withdrawal from the waters where the outrages I represent to you have been committed.

I have already said that the claims thus presented could be abundantly sustained by the law of nations, aside from Treaty and other rights. But I am not willing to rest the case on the law of nations. It is essential that the issue between United States' fishing-vessels and the "cruiser 'Terror'" should be examined in all its bearings, and settled in regard not merely to the general law of nations, but to the particular rights of the parties aggrieved.

It is a fact that the fishing-vessel "Marion Grimes" had as much right, under the special relations of Great Britain and the United States, to enter the harbour of Shelburne, as had the Canadian cruiser. The fact that the "Grimes" was liable to penalties for the abuse of such right of entrance does not disprove its existence. Captain Quigley is certainly liable to penalties for his misconduct on the occasion referred to. Captain Landry was not guilty of misconduct in entering and seeking to leave that harbour, and had abused no privilege. But whether liable or no for subsequent abuse of the rights, I maintain that the right of free entrance into that port, to obtain shelter, and whatever is incident thereto, belonged as much to the American fishing-vessel as to the Canadian cruiser.

The basis of this right is thus declared by an eminent jurist and statesman, Mr. R. R. Livingston, the first Secretary of State appointed by the Continental Congress, in instructions issued on the 7th January, 1782, to Dr. Franklin, then at Paris, entrusted by the United States with the negotiation of Articles of peace with great Britain. "The arguments on which the people of America found their claim to fish on the banks of Newfoundland arise, first, from their having once formed a part of the British Empire, in which state they always enjoyed, as fully as the people of Britain themselves, the right of fishing on those banks. They have shared in all the wars for the extension of that right, and Britain could with no more justice have excluded them from the enjoyment of it (even supposing that one nation could possess it to the exclusion of another) while they formed a part of that Empire, than they could exclude the people of London or Bristol. If so, the only inquiry is, how have we lost this right. If we were tenants in common with Great Britain while united with her, we still continue so, unless by our own act we have relinquished our title. Had we parted with mutual consent, we should doubtless

have made partition of our common rights by Treaty. But the oppressions of Great Britain forced us to a separation (which must be admitted, or we have no right to be independent); and it cannot certainly be contended that those oppressions abridged our rights, or gave new ones to Britain. Our rights, then, are not invalidated by this separation, more particularly as we have kept up our claim from the commencement of the war, and assigned the attempt of Great Britain to exclude us from the fisheries, as one of the causes of our recurring to arms."

As I had occasion to show in my note to the British Minister in the case of the "Everett Steele," of which a copy is hereto annexed, this "tenancy in common," held by citizens of the United States in the fisheries, they were to "continue to enjoy" under the Preliminary Articles of 1782 as well as under the Treaty of Peace of 1783; and this right, as a right of entrance in those waters, was reserved to them, though with certain limitations in its use, by the Treaty of 1818. I might here content myself with noticing that the Treaty of 1818, herein reciting a principle of the law of nations as well as ratifying a right previously possessed by fishermen of the United States, expressly recognizes the right of these fishermen to enter the "bays or harbours" of Her Majesty's Canadian dominions, "for the purpose of shelter and of repairing damages therein." The extent of other recognitions of rights in the same clause need not here be discussed. At present it is sufficient to say that the placing an armed cruiser at the mouth of a harbour in which United States' fishing-vessels are accustomed and are entitled to seek shelter on their voyages, such cruiser being authorized to arrest and board our fishing-vessels seeking such shelter, is an infraction not merely of the law of nations, but of a solemn Treaty stipulation. That, so far as concerns the fisherman so affected, its consequences are far-reaching and destructive, it is not necessary here to argue. Fishing-vessels only carry provisions enough for each particular voyage; if they are detained several days on their way to the fishing-banks the venture is broken up. The arrest and detention of one or two operates upon all. They cannot, as a class, with their limited capital and resources, afford to run risks so ruinous. Hence, rather than subject themselves to even the chances of suffering the wrongs inflicted by Captain Quigley "of the Canadian cruiser 'Terror,'" on some of their associates, they might prefer to abandon their just claim to the shelter consecrated to them alike by humanity, ancient title, the law of nations, and by Treaty, and face the gravest peril and the wildest seas in order to reach their fishing grounds. You will therefore represent to Her Majesty's Government that the placing Captain Quigley in the harbour of Shelburne to inflict wrongs and humiliation on United States' fishermen there seeking shelter is, in connection with other methods of annoyance and injury, expelling United States' fishermen from waters access to which, of great importance in the pursuit of their trade, is pledged to them by Great Britain, not merely as an ancient right, but as part of a system of international settlement.

It is impossible to consider such a state of things without grave anxiety. You can scarcely represent this too strongly to Her Majesty's Government.

It must be remembered, in considering this system, so imperilled, that the preliminaries to the Article of 1782, afterwards adopted as the Treaty of 1783, were negotiated at Paris by Dr. Franklin, representing the United States, and Mr. Richard Oswald, representing Lord Shelburne, then Colonial Secretary, and afterwards, when the Treaty was finally agreed on, Prime Minister. It must be remembered also that Lord Shelburne, while maintaining the rights of the Colonies when assailed by Great Britain, was nevertheless unwilling that their independence should be recognized prior to the Treaty of Peace, as if it were a concession wrung from Great Britain by the exigencies of war. His position was that this recognition should form part of a Treaty of Partition, by which, as is stated by the Court in *Sutton v. Sutton*, 1 Rus. and M. 675, already noticed by me, the two great sections of the British Empire agreed to separate, in their Articles of Separation recognizing to each other's citizens or subjects certain territorial rights. Thus the continuance of the rights of the United States in the fisheries was recognized and guaranteed; and it was also declared that the navigation of the Mississippi, whose sources were in the imperfect condition of geographical knowledge of that day, supposed to be in British territory, should be free and open to British subjects and to citizens of the United States. Both Powers, also, agreed that there should be no further prosecutions or confiscations based on the war; and in this way were secured the titles to property held in one country by persons remaining loyal to the other. This was afterwards put in definite shape by the following Article (Article X) of Jay's Treaty:—

"It is agreed that British subjects who now hold lands in the Territories of the United States, and American citizens who now hold lands in the Dominion of His

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Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein, and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

It was this Article which the Court, in *Sutton v. Sutton*, above referred to, held to be one of the incidents of the "separation" of 1783, of perpetual obligation unless rescinded by the parties, and hence not abrogated by the war of 1812.

It is not, however, on the continuousness of the reciprocities recognized by the Treaty of 1783 that I desire now to dwell. What I am anxious you should now impress upon the British Government is the fact that, as the fishery clause in this Treaty, a clause continued in the Treaty of 1818, was a part of a system of reciprocal recognitions which are interdependent, the abrogation of this clause, not by consent, but by acts of violence and of insult such as those of the Canadian cruiser "Terror," would be fraught with consequences which I am sure could not be contemplated by the Governments of the United States and Great Britain without immediate action being taken to avert them. To the extent of the system thus assailed I now direct attention.

When Lord Shelburne and Dr. Franklin negotiated the Treaty of Peace, the area on which its recognitions were to operate was limited. They covered, on the one hand, the fisheries; but the Map of Canada in those days, as studied by Lord Shelburne, gives but a very imperfect idea of the Territory near which the fisheries lay. Halifax was the only port of entry on the coast; the New England States were there, and the other nine provinces, but no organized Governments to the west of them. It was on this area only, as well as on Great Britain, that the recognitions and guarantees of the Treaty were at first to operate. Yet, comparatively small as this field may now seem, it was to the preservation over it of certain reciprocal rights that the attention of the negotiators was mainly given. And the chief of these rights were—(1) the fisheries, a common enjoyment in which by both parties took nothing from the property of either; and (2) the preservation to the citizens or subjects of each country of title to property in the other.

Since Lord Shelburne's Premiership this system of reciprocity and mutual convenience has progressed under the Treaties of 1842 and 1846, so as to give to Her Majesty's subjects, as well as to citizens of the United States, the free use of the River Detroit, on both sides of the Island Bois Blanc, and between that island and the American and Canadian shores, and all the several channels and passages between the various islands lying near the junction of the River St. Clair with the lake of that name. By the Treaty of 1846, the principle of common border privileges was extended to the Pacific Ocean. The still existing commercial Articles of the Treaty of 1871, further amplified those mutual benefits, by embracing the use of the inland water-ways of either country, and defining enlarged privileges of bonded transit by land and water through the United States for the benefit of the inhabitants of the Dominion. And not only by Treaties has the development of Her Majesty's American dominion, especially to the westward, been aided by the United States, but the vigorous contemporaneous growth under the enterprise and energy of citizens of the North-western States and territories of the United States has been productive of almost equal advantages to the adjacent possessions of the British Crown; and the favouring legislation by Congress has created benefits in the way of railway facilities, which, under the sanction of State Laws have been, and are freely and beneficially enjoyed by the inhabitants of the Dominion and their Government.

Under this system of energetic and co-operative development the Coast of the Pacific has been reached by the trans-continental lines of railway within the territorial limits of the respective countries, and as I have stated, the United States being the pioneers in this remarkable progress, have been happily able to anticipate and incidentally to promote the subsequent success of their neighbours in British America.

It will be scarcely necessary for you to say to Lord Ddlesleigh that the United States in thus aiding in the promotion of the prosperity, and in establishing the security of Her Majesty's Canadian dominions, claims no particular credit. It was prompted, in thus opening its Territory to Canadian use, and incidentally for Canadian growth, in large measure by the consciousness that such good offices are part of a system of mutual convenience and advantage, growing up, under the Treaties of Peace, and assisted by the natural forces of friendly contiguity. Therefore, it is that we witness with surprise and painful apprehension the United States' fishermen hampered in their enjoyment of their undoubted rights in the fisheries.

The hospitalities of Canadian coasts and harbours, which are ours by ancient right,

and which these Treaties confirm, cost Canada nothing and are productive of advantage to her people. Yet, in defiance of the most solemn obligations, in utter disregard of the facilities and assistances granted by the United States, and in a way especially irritating, a deliberate plan of annoyances and aggressions has been instituted and plainly exhibited during the last fishing season, a plan calculated to drive these fishermen from shores where, without injury to others, they prosecute their own legitimate and useful industry.

It is impossible not to see that if the unfriendly and unjust system, of which the cases now presented are part, is sustained by Her Majesty's Government, serious results will almost necessarily ensue, great as is the desire of this Government to maintain the relations of good neighbourhood. Unless Her Majesty's Government shall effectually check these aggressions, a general conviction on the part of the people of the United States may naturally be apprehended that, as Treaty stipulations in behalf of our fishermen, based on their ancient rights, cease to be respected, the maintenance of the comprehensive system of mutual commercial accommodation between Canada and the United States could not reasonably be expected.

In contemplation of so unhappy and undesirable a condition of affairs I express the earnest hope that Her Majesty's Government will take immediate measures to avert its possibility.

With no other purpose than the preservation of peace and good-will, and the promotion of international amity, I ask you to represent to the statesmen charged with the administration of Her Majesty's Government the necessity of putting an end to the action of Canadian officials in excluding American fishermen from the enjoyment of their Treaty rights in the harbours and waters of the maritime provinces of British North America.

The action of Captain Quigley in hauling down the flag of the United States from the "Marion Grimes" has naturally aroused much resentment in this country, and has been made the subject of somewhat excited popular comment; and it is wholly impossible to account for so extraordinary and unwarranted an exhibition of hostility and disrespect by that official. I must suppose that only his want of knowledge of what is due to international comity and propriety, and overheated zeal as an officer of police could have permitted such action; but I am confident that, upon the facts being made known by you to Her Majesty's Government, it will at once be disavowed, a fitting rebuke be administered, and the possibility of a repetition of Captain Quigley's offence be prevented.

It seems hardly necessary to say that it is not until after condemnation by a Prize Court that the national flag of a vessel seized as a prize of war is hauled down by her captor. Under the 14th section of the 20th chapter of the Navy Regulations of the United States, the Rule in such cases is laid down as follows:—

"A neutral vessel, seized, is to wear the flag of her own country until she is adjudged to be a lawful prize by a competent Court."

But, *à fortiori*, is this principle to apply in cases of Customs seizures, where fines only are imposed and where no belligerency whatever exists. In the port of New York, and other of the countless harbours of the United States, are merchant-vessels to-day flying the British flag which from time to time are liable to penalties for violation of Customs Laws and Regulations. But I have yet to learn that any official assuming, directly or indirectly, to represent the Government of the United States, would, under such circumstances, order down, or forcibly haul down, the British flag from a vessel charged with such irregularity; and I now assert that if such act were committed, this Government, after being informed of it, would not wait for a complaint from Great Britain, but would at once promptly reprimand the parties concerned in such misconduct and would cause proper expression of regret to be made.

A scrupulous regard for international respect and courtesy should mark the intercourse of the officials of these two great and friendly nations, and anything savouring of the contrary should be unhesitatingly and emphatically rebuked. I cannot doubt that these views will find ready acquiescence from those charged with the administration of the Government of Great Britain.

You are at liberty to make Lord Iddesleigh acquainted with the contents of this letter, and, if desired, leave with him a copy.

I am, &c.
(Signed) T. F. BAYARD.

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Inclosure 2 in No. 145.

Mr. Bayard to Sir L. West, August 18, 1886.

[See Inclosure in No. 101.]

Inclosure 3 in No. 145.

Mr. Bayard to Sir L. West.

Sir, *Department of State, Washington, October 19, 1886.*

THE "Everett Steele," a fishing-vessel of Gloucester, Massachusetts, in the United States, of which Charles E. Forbes, an American citizen, was master, was about to enter, on the 10th September, 1886, the harbour of Shelburne, Nova Scotia, to procure water and for shelter during repairs. She was hailed, when entering the harbour, by the Canadian cutter "Terror," by whose captain, Quigley, her papers were taken and retained. Captain Forbes, on arriving off the town, anchored and went with Captain Quigley to the Custom-house, who asked him whether he reported whenever he had come in. Captain Forbes answered that he had reported always with the exception of a visit on the 25th March, when he was driven into the lower harbour for shelter by a storm, and where he remained only eight hours. The Collector did not consider that this made the vessel liable, but Captain Quigley refused to discharge her; said he would keep her until he heard from Ottawa, put her in charge of policemen, and detained her until the next day, when at noon she was discharged by the Collector. But a calm having come on, she could not get to sea, and by the delay her bait was spoiled and the expected profits of her trip lost.

It is scarcely necessary for me to remind you, in presenting this case to the consideration of your Government, that when the north-eastern coast of America was wrested from France, in a large measure by the valour and enterprise of New England fishermen, they enjoyed, in common with other British subjects, the control of the fisheries with which that coast was enriched, and that by the Treaty of Peace of 1783, which, as was said by an eminent English Judge when treating an analogous question, was a Treaty of "Separation," this right was expressly affirmed.

It is true that by the Treaty of 1818 the United States renounced a portion of its rights in these fisheries, retaining, however, the old prerogatives of visiting the bays and harbours of the British north-eastern possessions for the purpose of obtaining wood, water, and shelter, and for objects incidental to those other rights of territoriality so retained and confirmed. What is the nature of these incidental prerogatives, it is not, in considering this case, necessary to discuss. It is enough to say that Captain Forbes entered the harbour of Shelburne to obtain shelter and water, and that he had as much right to be there under the Treaty of 1818, confirming in this respect the ancient privileges of American fishermen on those coasts, as he would have had on the high seas, carrying on, under shelter of the flag of the United States, legitimate commerce. The Government which you so honourably represent has, with its usual candour and magnanimity, conceded that when a merchant-vessel of the United States is stopped in time of peace by a British cruiser on the groundless suspicion of being a slave-trader, damages are to be paid to this Government, not merely to redress the injury suffered, but as an apology for the insult offered to the flag of the United States. But the case now presented to you is a much stronger one than that of a seizure on the high seas of a ship unjustly suspected of being a slaver. When a vessel is seized on the high seas on such a suspicion, its seizure is not on waters where its rights, based on prior and continuous ownership, are guaranteed by the Sovereign making the seizure. If in such case the property of the owners is injured, it is, however wrongful the act, a case of rare occurrence, on seas comparatively unfrequented, with consequences not very far-reaching; and if a blow is struck at a system of which such vessel is unjustly supposed to be a part, such system is one which the civilized world execrates. But seizures of the character of that which I now present to you have no such features. They are made in waters not only conquered and owned by American fishermen, but for the very purpose for which they were being used by Captain Forbes, guaranteed to them by two successive Treaties between the United States and Great Britain.

These fishermen also, I may be permitted to remind you, were engaged in no nefarious trade. They pursue one of the most useful and meritorious of industries. They gather from the seas, without detriment to others, a food, which is nutritious and

cheap, for the use of an immense population. They belong to a stock of men which contributed before the revolution most essentially to British victories on the north-eastern Atlantic, and it may not be out of place to say they have shown since that revolution, when serving in the navy of the United States, that they have lost none of their ancient valour, hardihood, and devotion to their flag.

The indemnity which the United States has claimed, and which Great Britain has conceded, for the visitation and search of isolated merchantmen seized on remote African seas on unfounded suspicion of being slavers, it cannot do otherwise now than claim, with a gravity which the importance of the issue demands, for its fishermen seized on waters in which they have as much right to traverse for shelter as have the vessels by which they are molested. This shelter, it is important to observe, they will as a class be debarred from if annoyances such I now submit to you are permitted to be inflicted on them by minor officials of the British Provinces.

Fishermen, as you are aware, have been considered, from the usefulness of their occupation, from their simplicity, from the perils to which they are exposed, and from the small quantity of provisions and protective implements they are able to carry with them, the wards of civilized nations; and it is one of the peculiar glories of Great Britain that she has taken the position—a position now generally accepted—that even in time of war they are not to be the subjects of capture by hostile cruisers. Yet, in defiance of this immunity thus generously awarded by humanity and the laws of nations, the very shelter which they own in these seas, and which is ratified to them by two successive Treaties, is to be denied to them, not, I am confident, by the act of the wise, humane, and magnanimous Government you represent, but by deputies of deputies permitted to pursue, not uninfluenced by local rivalry these methods of annoyance in fishing waters which our fishermen have as much right to visit on lawful errands as those officials have themselves. For let it be remembered that by annoyances and expulsions such as these, the door of shelter is shut to American fishermen as a class.

If a single refusal of that shelter, such as the present is sustained, it is a refusal of shelter to all fishermen pursuing their task in those inhospitable coasts. Fishermen have not funds enough nor outfit enough, nor, I may add recklessness enough, to put into harbours where, perfect as is their title, they meet with such treatment as that suffered by Captain Forbes.

To sanction such treatment, therefore, is to sanction the refusal to the United States' fishermen as a body of that shelter to which they are entitled by ancient right, by the law of nations, and by solemn Treaty. Nor is this all. That Treaty is a part of a system of mutual concessions. As was stated by a most eminent English Judge in the case of *Sutton v. Sutton* (1 Russ and M., 675), which I have already noticed, it was the principle of the Treaty of Peace, and of the Treaties which followed between Great Britain and the United States, that the "subjects of the two parts of the divided Empire should, notwithstanding the separation, be protected in the mutual enjoyment" of the rights those Treaties affirmed. If, as I cannot permit myself to believe, Great Britain should refuse to citizens of the United States the enjoyment of the plainest and most undeniable of these rights, the consequences would be so serious that they cannot be contemplated by this Government but with the gravest concern.

I have, &c.

(Signed) T. F. BAYARD.

No. 146.

The Earl of Iddesleigh to Mr. Phelps.

Sir,

Foreign Office, November 30, 1886.

I HAVE given my careful consideration to the contents of the note of the 11th September last, which you were good enough to address to me in reply to mine of the 1st of the same month on the subject of the North American fisheries.

The question, as you are aware, has for some time past engaged the serious attention of Her Majesty's Government, and the notes which have been addressed to you in relation to it, both by my predecessor and by myself, have amply evinced the earnest desire of Her Majesty's Government to arrive at some equitable settlement of the controversy. It is, therefore, with feelings of disappointment that they do not find in your note under reply any indication of a wish on the part of your Government to enter upon negotiations based on the principle of mutual concessions, but rather a

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suggestion that some *ad interim* construction of the terms of the existing Treaty should, if possible, be reached, which might for the present remove the chance of disputes; in fact, that Her Majesty's Government, in order to allay the differences which have arisen, should temporarily abandon the exercise of the Treaty rights which they claim, and which they conceive to be indisputable. For Her Majesty's Government are unable to perceive any ambiguity in the terms of Article I of the Convention of 1818; nor have they as yet been informed in what respects the construction placed upon that instrument by the Government of the United States differs from their own.

They would, therefore, be glad to learn, in the first place, whether the Government of the United States contest that, by Article I of the Convention, United States' fishermen are prohibited from entering British North American bays or harbours on those parts of the coast referred to in the second part of the Article in question for any purposes save those of *shelter, repairing damages, purchasing wood, and obtaining water.*

Before proceeding to make some observations upon the other points dealt with in your note, I have the honour to state that I do not propose in the present communication to refer to the cases of the schooners "Thomas F. Bayard" and "Mascotte," to which you allude.

The privileges manifestly secured to United States' fishermen by the Convention of 1818 in Newfoundland, Labrador, and the Magdalen Islands are not contested by Her Majesty's Government, who, whilst determined to uphold the rights of Her Majesty's North American subjects as defined in the Convention, are no less anxious and resolved to maintain in their full integrity the facilities for prosecuting the fishing industry on certain limited portions of the coast which are expressly granted to citizens of the United States. The communications on the subject of these two schooners which I have requested Her Majesty's Minister at Washington to address to Mr. Bayard cannot, I think, have failed to afford to your Government satisfactory assurances in this respect.

Reverting now to your note under reply, I beg to offer the following observations on its contents:—

In the first place, you take exception to my predecessor having declined to discuss the case of the "David J. Adams," on the ground that it was still *sub judice*, and you state that your Government are unable to accede to the proposition contained in my note of the 1st September last, to the effect that "it is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

In regard to this point, it is to be remembered that there are three questions calling for investigation in the case of the "David J. Adams":—

1. What were the acts committed which led to the seizure of the vessel?
2. Was her seizure for such acts warranted by any existing laws?
3. If so, are those laws in derogation of the Treaty rights of the United States?

It is evident that the first two questions must be the subject of inquiry before the third can be profitably discussed, and that those two questions can only be satisfactorily disposed of by a judicial inquiry. Far from claiming that the United States' Government would be bound by the construction which the British Tribunals might place on the Treaty, I stated in my note of the 1st September that if that decision should be adverse to the views of your Government, it would not preclude further discussion between the two Governments and the adjustment of the question by diplomatic action.

I may further remark that the very proposition advanced in my note of the 1st September last, and to which exception is taken in your reply, has, on a previous occasion, been distinctly asserted by the Government of the United States under precisely similar circumstances, that is to say, in 1870, in relation to the seizure of American fishing-vessels in Canadian waters, for alleged violation of the Convention of 1818.

In a despatch of the 29th October, 1870, to Mr. W. A. Dart, United States' Consul-General at Montreal (which is printed at p. 431 of the volume for that year of the Foreign Relations of the United States, and which formed part of the correspondence referred to by Mr. Bayard in his note to Sir L. West of the 20th May last), Mr. Fish expressed himself as follows:—

"It is the duty of the owners of the vessels to defend their interests before the Courts at their own expense, and without special assistance from the Government at this stage of affairs. It is for those Tribunals to construe the Statutes under which they act. If the construction they adopt shall appear to be in contravention of our

Treaties with Great Britain, or to be (which cannot be anticipated) plainly erroneous in a case admitting of no reasonable doubt, it will then become the duty of the Government—a duty which it will not be slow to discharge—to avail itself of all necessary means for obtaining redress.”

Her Majesty's Government, therefore, still adhere to their view, that any diplomatic discussion as to the legality of the seizure of the “David J. Adams” would be premature until the case has been judicially decided.

It is further stated in your note that “the absence of any Statute authorizing proceedings or providing a penalty against American fishing-vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing” affords “the most satisfactory evidence that up to the time of the present controversy no such construction has been given to the Treaty by the British or by the Colonial Parliament as is now sought to be maintained.”

Her Majesty's Government are quite unable to accede to this view, and I must express my regret that no reply has yet been received from your Government to the arguments on this and all the other points in controversy which are contained in the able and elaborate Report (as you courteously describe it) of the Canadian Minister of Marine and Fisheries, of which my predecessor communicated to you a copy.

In that Report reference is made to the argument of Mr. Bayard, drawn from the fact that the proposal of the British negotiators of the Convention of 1818, to the effect that American fishing-vessels should carry no merchandize, was rejected by the American negotiators; and it is shown that the above proposal had no application to American vessels resorting to the Canadian coasts, but only to those exercising the right of inshore fishing and of landing for the drying and curing of fish on parts of the coasts of Newfoundland and Labrador. The Report, on the other hand, shows that the United States' negotiators proposed that the right of “procuring bait” should be added to the enumeration of the four objects for which the United States' fishing-vessels might be allowed to enter Canadian waters; and that such proposal was rejected by the British negotiators, thus showing that there could be no doubt in the minds of either party at the time that the “procuring of bait” was prohibited by the terms of the Article

The Report, moreover, recalls the important fact that the United States' Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the Convention of 1818 nor the Treaty of Washington conferred any right or privilege of trading on American fishermen; that the “various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait, and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them.”

This view was confirmed by the ruling of the Commissioners.

Whilst I have felt myself bound to place the preceding observations before you, in reply to the arguments contained in your note, I beg leave to say that Her Majesty's Government would willingly have left such points of technical detail and construction for the consideration of a Commission properly constituted to examine them, as well as to suggest a means for either modifying their application, or substituting for them some new arrangement of a mutually satisfactory nature.

I gather, however, from your note that, in the opinion of your Government, although a revision of Treaty stipulations on the basis of mutual concessions was desired by the United States before the present disputes arose, yet the present time is inopportune for various reasons, among which you mention the irritation created in the United States by the belief that the action of the Canadian Government has had for its object to force a new Treaty on your Government.

Her Majesty's Government learn with much regret that such an impression should prevail, for every effort has been made by the Canadian Government to promote a friendly negotiation, and to obviate the differences which have now arisen. Indeed, it is hardly necessary to remind you that, for six months following the denunciation by your Government of the Fishery Articles of the Treaty of Washington, the North American fisheries were thrown open to citizens of the United States without any equivalent, in the expectation that the American Government would show their willingness to treat the question in a similar spirit of amity and good-will.

Her Majesty's Government cannot but express a hope that the whole correspondence may be laid immediately before Congress, as they believe that its perusal would influence public opinion in the United States in favour of negotiating, before the commencement of the next fishing season, an arrangement based on mutual concessions, and which

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would therefore (to use the language of your note) "consist with the dignity, the interests, and the friendly relations of the two countries."

Her Majesty's Government cannot conceive that negotiations commenced with such an object and in such a spirit could fail to be successful; and they trust, therefore, that your Government will endeavour to obtain from Congress, which is about to assemble, the necessary powers to enable them to make to Her Majesty's Government some definite proposals for the negotiation of a mutually advantageous arrangement.

I have, &c.

(Signed) IDDESLEIGH.

No. 147.

Mr. Bramston to Sir J. Parncefote.—(Received December 2.)

Sir,

Downing Street, December 1, 1886.

WITH reference to the letter from this Department of the 25th ultimo, I am directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Idlesleigh, a copy of an order of Her Majesty in Council assenting to the Reserved Bill of the Legislature of Canada, entitled "An Act further to amend the Act respecting Fishing by Foreign Vessels."

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure in No. 147.

At the Court at Windsor, the 26th day of November, 1886.

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

EARL OF ROSSLYN.

VISCOUNT CROSS.

LORD STANLEY OF PRESTON.

WHEREAS by an Act passed in the 30th year of Her Majesty's reign, entitled "An Act for the Union of Canada, Nova Scotia, and New Brunswick and the Government thereof, and for purposes connected therewith," it is amongst other things enacted that a Bill reserved for the signification of the Queen's pleasure shall not have any force unless and until within two years from the date on which it was presented to the Governor-General for the Queen's assent, the Governor-General signifies by Speech or Message to each of the Houses of the Parliament, or by Proclamation, that it has received the assent of the Queen in Council.

And whereas on the 2nd day of June, 1886, the Governor-General of Canada reserved a certain Bill passed by the Senate and House of Commons of Canada, entitled "An Act further to amend the Act respecting Fishing by Foreign Vessels," for the signification of Her Majesty's pleasure thereon. And whereas the said Bill so reserved as foresaid has been laid before Her Majesty's Council, and it is expedient that the said Bill should be assented to by Her Majesty:

Now, therefore, Her Majesty, in pursuance of the said Act and in exercise of the Powers thereby reserved to Her Majesty as aforesaid, doth by this present Order, by and with the advice of Her Majesty's privy Council, declare her assent to the said Bill.

And the Right Honourable Edward Stanhope, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

(Signed) C. L. PEEL.

No. 148.

Mr. Bramston to Sir J. Poncefote.—(Received December 2.)

Sir,

Downing Street, December 1, 1886.

WITH reference to previous correspondence respecting the seizure of the "David J. Adams," and to the general question of the North American fisheries, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch from the Governor-General of Canada, forwarding a Report on the subject by the Dominion Minister of Justice.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 148.

The Marquis of Lansdowne to Mr. Stanhope.

Sir,

Government House, Ottawa, November 9, 1886.

WITH reference to Earl Granville's despatch of the 24th June last respecting the Fisheries question, and inclosing copies of two letters from the Foreign Office, and one from the United States' Minister in London addressed to the Secretary of State for Foreign Affairs, I have the honour to transmit herewith a copy of an approved Minute of the Privy Council of Canada, concurring in a Report of the Minister of Justice dealing with the points raised by Mr. Phelps in his note of the 2nd June last, on the subject of the seizure of the United States' fishing-vessel "David J. Adams," near Digby, Nova Scotia.

I have, &c.

(Signed) LANSDOWNE.

Inclosure 2 in No. 148.

Report of a Committee of the Honourable the Privy Council for Canada, approved by His Excellency the Administrator of the Government in Council on the 2nd November, 1886.

THE Committee of the Privy Council here had under consideration a despatch dated 24th June, 1886, from the Right Honourable the Secretary of State for the Colonies, respecting the Fisheries question, and inclosing copies of letters on the subject from the Foreign Office to the Colonial Office, and of one from Mr. Phelps to the Secretary of State for Foreign Affairs.

The Minister of Justice, to whom the despatch and inclosures were referred, submits a Report thereon herewith.

The Committee concur in the said Report, and advise that your Excellency be moved to transmit a copy thereof, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is submitted for your Excellency's approval.

(Signed)

JOHN J. MCGEE, Clerk,
Privy Council, Canada.

Inclosure 3 in No. 148.

Report.

To his Excellency the Administrator of the Government in Council.

Department of Justice, Ottawa, July 22, 1886.

WITH reference to the despatch of the 24th June last from the Secretary of State for the Colonies to your Excellency respecting the Fisheries question, and inclosing copies of letters on the subject from the Foreign Office to the Colonial Office, and of one

from Mr. Phelps to the Secretary of State for Foreign Affairs, the Undersigned has the honour to report as follows:—

The letter of Mr. Phelps seems designed to present to Earl Rosebery the case of the "David J. Adams," the fishing-vessel seized a short time ago near Digby, in the Province of Nova Scotia.

Mr. Phelps intimates that he has received from his Government a copy of the Report of the Consul-General of the United States at Halifax, giving full details and depositions relating to the seizure, and that that Report and the evidence annexed to it appear fully to sustain the points which he had submitted to Earl Rosebery at an interview which he had had a short time before the date of his letter.

The Report of the Consul-General, and the depositions referred to, seem not to have been presented to Earl Rosebery, and their contents can only be inferred from the statements made in Mr. Phelps' letter.

These statements appear to be based on the assertions made by the persons interested in the vessel by way of defence against the complaint under which she was seized, but cannot be regarded as presenting a full or accurate representation of the case. The Undersigned submits the facts in regard to this vessel as they are alleged by those on whose testimony the Government of Canada can rely to sustain the seizure and detention.

The Offence (as to the Treaty and Fishery Laws).

The "David J. Adams" was a United States' fishing-vessel. Whether, as alleged in her behalf, her occupation was deep-sea fishing or not, and whether, as suggested, she had not been engaged, nor was intended to be engaged, in fishing in any limit prescribed by the Treaty of 1818 or not, are questions which do not, in the opinion of the Undersigned, affect the validity of the seizure and of the proceedings subsequent thereto, for reasons which will be hereafter stated; but in so far as they may be deemed material to the defence they are questions of fact, which remain to be proved in the Vice-Admiralty Court at Halifax, in which the proceedings for the vessel's condemnation are pending, and in respect of which proof is now being taken; and inasmuch as the trial has not been concluded (much less a decision reached), it is perhaps premature for Mr. Phelps to claim the restoration of the vessel, and to assert a right to damages for her detention, on the assumption of the supposed facts before referred to.

It is alleged in the evidence on behalf of the prosecution that the "David J. Adams," being a United States' fishing-vessel, on the morning of the 5th May, 1886, was in what is called the "Annapolis Basin," which is a harbour on the north-west coast of Nova Scotia. She was several miles within the Basin, and the excuse suggested (that the captain and crew may have been there through a misapprehension as to the locality) by the words of Mr. Phelps' letter, "Digby is a small fishing settlement, and its harbour not defined," is unworthy of much consideration.

Digby is not a fishing settlement, although some of the people on the neighbouring shores engage in fishing. It is a town with a population of about 2,000 persons. Its harbour is formed by the Annapolis Basin, which is a large inlet of the Bay of Fundy, and the entrance to it consists of a narrow strait marked by conspicuous headlands, which are a little more than a mile apart. The entrance is called "Digby Gut," and for all purposes connected with this inquiry the harbour is one of the best defined in America.

The "David J. Adams" was, on the morning of the 5th day of May, 1886, as has already been stated, several miles within the Gut. She was not there for the purpose of "shelter," or "repairs," nor to "purchase wood," nor to "obtain water." She remained there during the 5th and 6th May, 1886; she was lying at anchor about half-a-mile from the shore, at a locality called "Clement's West."

On the morning of the 6th May, 1886, the captain made application to the owners of a fishing-weir near where he was lying for bait, and purchased four and a-half barrels of that article. He also purchased and took on board about 2 tons of ice. While waiting at anchor for these purposes the name of the vessel's "hailing place" was kept covered by canvas, and this concealment continued while she afterwards sailed down past Digby.

One of the crew represented to the persons attending the weir that the vessel belonged to the neighbouring province of New Brunswick. The captain told the owner of the weir, when the Treaty was spoken of by the latter, that the vessel was under British register. The captain said he would wait until the next morning to get more bait from the catch in the weir which was expected that day. At daybreak, however, on the morning of the 7th May, 1886, the Government steamer "Landsowne" arrived off Digby, and the "David

J. Adams" got under way, without waiting to take in the additional supply of bait, and sailed down the Basin towards the Gut.

Before she had passed Digby she was boarded by the first officer of the "Lansdowne," and to him the captain made the following statement: that he had come to that place to see his people, as he had formerly belonged there, that he had no fresh bait on board, and that he was from the "Banks" and bound for Eastport, Maine.

The officer of the "Lansdowne" told him he had no business there, and asked him if he knew the law. His reply was "Yes."

A few hours afterwards, and while the "David J. Adams" was still inside the Gut, the officer of the "Lansdowne," ascertaining that the statements of the captain were untrue, and that bait had been purchased by him within the harbour on the previous day, returned to the "David J. Adams," charged the captain with the offence, and received for his reply the assertion that the charge was false, and that the person who gave the information was a "liar."

The officer looked into the hold of the vessel and found the herring which had been purchased the day before, and which, of course, was perfectly fresh, but the captain declared that this "bait" was ten days old.

The officer of the "Lansdowne" returned to his ship, reported the facts, and went again to the "Adams," accompanied by another officer, who also looked at the bait. Both returned to the "Lansdowne," and then conveyed to the "Adams" the direction that she should come to Digby and anchor near the "Lansdowne." This was, in fact, the seizure.

These are the circumstances by which the seizure was, in the opinion of Mr. Phelps, "much aggravated," and which make it seem very apparent to him that the seizure "was not made for the purpose of enforcing any right or redressing any wrong."

The fact that the seizure was preceded by visitations and searches was due to the statements of the master, and the reluctance of the officers of the "Lansdowne" to enforce the law until they had ascertained to a demonstration that the offence had been committed, and that the captain's statements were untrue.

The Offence (as to Customs Laws).

The "David J. Adams," as already stated, was in harbour upwards of forty-eight hours, and when seized was proceeding to sea without having been reported at any custom-house. Her business was not such as to make it her interest to attract the attention of the Canadian authorities, and it is not difficult, therefore, to conjecture the reason why she was not so reported, or to see that the reason put forward, that Digby is but "a small fishing settlement, and its harbour not defined," is a disingenuous one. In going to the weir to purchase bait the vessel passed the custom-house at Digby almost without hailing distance. When at the weir she was within 1 or 2 miles of another custom-house (at Clementsport), and within about 15 miles of another (at Annapolis). The master has not asserted that he did not know the law on this subject, as it is established that he knew the law in relation to the restriction on foreign fishing-vessels.

The provisions of the Customs Act of Canada on this subject are not essentially different from those of his own country. The captain and crew were ashore, during the 5th and 6th May, 1886. The following provisions of the Customs Act of Canada apply:—

"The master of every vessel coming from any port or place out of Canada, or coast-wise, and entering any port in Canada, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the custom-house for the port or place of entry where he arrives, and there make a report in writing to the Collector or other proper officer of the arrival and voyage of such vessel, stating her name, country, and tonnage, the port of registry, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and, if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stowed loose, and where and to whom consigned, and where any and what goods, if any, have been laden or unladen, or bulk has been broken, during the voyage, what part of the cargo, and the number and names of the passengers which are intended to be landed at that port, and what and whom at any other port in Canada, and what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board as far as any of such particulars are or can be known to him."—46 Viet., cap. 12, sec. 25.

"The master shall at the time of making his Report, if required by the officer of Customs, produce to him the bills of lading of the cargo, or true copies thereof, and shall make and subscribe an affidavit referring to his Report, and declaring that all the statements made in the Report are true, and shall further answer all such questions concerning the

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vessel and cargo, and the crew, and the voyage, as are demanded of him by such officer, and shall, if required, make the substance of any such answer part of his Report."—46 Vict., cap. 12, sec. 28.

"If any goods are unladen from any vessel before such Report is made, or if the master fails to make such Report, or makes an untrue Report, or does not truly answer the questions demanded of him, as provided in the next preceding section, he shall incur a penalty of 400 dollars, and the vessel may be detained until such penalty is paid."—46 Vict., cap. 12, sec. 28.

Proceedings following the Seizure.

These have been made the subject of complaint by Mr. Phelps, although the explanations which were given in the previous Memorandum of the Undersigned (in reference to the letters of Mr. Bayard to Her Majesty's Minister at Washington), and in the Report on the same subject of the Minister of Marine and Fisheries laid before his Excellency the Governor-General on the 14th June ultimo, coupled with a disavowal by the Canadian Government of any intention that the proceedings in such cases should be unnecessarily harsh or pursued in a punitive spirit, might have been expected to be sufficient. After the seizure was made the Commander of the "Lansdowne" took the "David J. Adams" across the Bay of Fundy to St. John, a distance of about 40 miles. He appears to have had the impression that, as his duties would not permit him to remain at Digby, the vessel would not be secure from rescue, which has in several cases occurred after the seizure of fishing-vessels. He believed she would be more secure in the harbour of St. John, and that the legal proceedings, which in due course would follow, could be taken there. He was immediately directed, however, to return with the vessel to Digby, as it seemed more in order, and more in compliance with the Statutes relating to the subject, that she should be detained in the place of seizure, and that the legal proceedings should be taken in the Vice-Admiralty Court of the Province where the offence was committed. It does not seem to be claimed by the United States' authorities that any damage to the vessel, or that any injury or inconvenience to any one concerned, was occasioned by this removal to St. John, and by her return to Digby, occupying as they did but a few hours, and yet this circumstance seems to be relied on as "aggravating the seizure," and as depriving it of the character of a seizure made "to enforce a right or to redress a wrong."

Another ground for complaint is that in Digby, "the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such a manner as to prevent its contents being read," and that "the request of the captain and of the United States' Consul-General to be allowed to detach the writ from the mast, for the purpose of learning its contents, was positively refused by the Provincial official in charge, that the United States Consul-General was not able to learn from the Commander of the 'Lansdowne' the nature of the complaint against the vessel, and that his respectful application to that effect was fruitless."

1. As to the position of the paper on the mast, it is not a fact that it was nailed to the vessel's mast "in such a manner as to prevent its contents being read. It was nailed there for the purpose of being read, and could have been read.

2. As to the refusal to allow it to be detached, such refusal was not intended as a discourtesy, but was legitimate and proper. The paper purported to be, and was, a copy of the writ of summons and warrant, which were then in the Registry of the Vice-Admiralty Court at Halifax. It was attached to the mast by the officer of the Court, in accordance with the rules and procedure of that Court. The purposes for which it was so attached did not admit of any consent for its removal.

3. As to the desire of the captain and of the United States' Consul-General to ascertain the contents of the paper, the original was in the Registry of the Court, accessible to every person, and the Registry is within 80 yards of the Consul-General's office; all the reasons for the seizure and detention were made, however, to the captain, days before the paper arrived to be placed on the mast, and, before the Consul-General arrived at Digby, these reasons were not only matters of public notoriety, but had been published in the newspapers of the province, and in hundreds of other newspapers circulating throughout Canada and the United States. The captain and the Consul-General did not need, therefore, to take the paper from the mast in order to learn the causes of the seizure and detention.

4. As to the application of the Consul-General having been fruitless, the fact has transpired that he had reported the seizure, and its causes, to his Government, before the application was made. It has been already explained in the previous

Memorandum of the Undersigned, and in the Report of the Minister of Marine and Fisheries, that the application was for a specific statement of the charges, and that it was made to an officer who had neither the legal acquirements nor the authority to state them in a more specific form than that in which he had already stated them. The Commander of the "Lansdowne" requested the Consul-General to make his request to the Minister of Marine and Fisheries, and, if he had done so, the specific statement which he had desired could have been furnished in an hour. It is hoped that the explanation already made, and the precautions which have been taken against even the appearance of discourtesy in the future, will, on consideration, be found to be satisfactory.

Incidents of the Customs Seizure.

Mr. Phelps presents the following views with respect to the claim that the "David J. Adams," besides violating the Treaty and the Statutes relating to "fishing by foreign vessels," is liable to be detained for the penalty under the Customs Law:—

1. That this claim indicates the consciousness that the vessel could not be forfeited for the offence against the Treaty and Fishing Laws. This supposition is groundless. It is by no means uncommon in legal proceedings, both in Canada and the United States, for such proceedings to be based on more than one charge, although any one of the charges would in itself, if sustained, be sufficient for the purpose of the complainant. The success of this litigation, like that of all litigation, must depend not merely on the rights of the parties, but on the proof which may be adduced as to a right having been infringed. In this instance it appears from Mr. Phelps' letter that the facts which are to be made the subject of proof are evidently in dispute, and the Government of Canada could, with propriety, assert both its claims, so that both of them should not be lost by any miscarriage of justice in regard to one of them. This was likewise the proper cause to be taken, in view of the fact that an appeal might at any time be made to the Government by the owners of the "David J. Adams" for remission of the forfeiture incurred in respect of the Fishery Laws. The following is a section of the Canadian Statute relating to fishing by foreign vessels:—

"In cases of seizure under this Act, the Governor in Council may direct a stay of proceedings, and, in cases of condemnation, may relieve from the penalty in whole or in part, and on such terms as are deemed right."—31 Vict., cap. 61, sec. 19.

It seemed necessary and proper to make at once any claim founded on infraction of the Customs Laws, in view of the possible termination of the proceedings by executive interference under this enactment. It would surely not be expected that the Government of Canada should wait until the termination of the proceedings under the Fishery Acts before asserting its claim to the penalty under the Customs Act. The owners of the offending vessel and all concerned were entitled to know as soon as they could be made aware what the claims of the Government were in relation to the vessel, and they might fairly urge that any which were not disclosed were waived.

2. Mr. Phelps remarks that this charge is "not the one on which the vessel was seized," and "was an afterthought." The vessel was seized by the Commander of the "Lansdowne" for a violation of the Fishery Laws before the Customs authorities had any knowledge that such a vessel had entered into the port, or had attempted to leave it, and the Commander was not aware at that time whether the "David J. Adams" had made proper entry or not. A few hours afterwards, however, the Collector of Customs at Digby ascertained the facts, and on the facts being made known to the Head of his Department at Ottawa, was immediately instructed to take such steps as might be necessary to assert the claim for the penalty which had been incurred. The Collector did so.

3. Mr. Phelps asserts that the charge of breach of the Customs Law is not the one which must now be principally relied on for condemnation. It is true that condemnation does not necessarily follow. The penalty prescribed is a forfeiture of 400 dollars, on payment of which the owners are entitled to the release of the vessel. If Mr. Phelps means by the expression just quoted that the Customs offence cannot be relied on in respect to the penalty claimed, and that the vessel cannot be detained until that penalty is paid, it can only be said that in this contention the Canadian Government does not concur. Section 39 of the Customs Act, before quoted, is explicit on that point.

4. It is also urged that the offence was, at most, "only an accidental and clearly technical breach of a Custom-house Regulation, by which no harm was intended and from which no harm came, and would in ordinary cases be easily condoned by an apology and perhaps payment of costs." What has already been said under the heading "The Offence (as to Customs Laws)" presents the contention opposed to the offence being

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considered as "accidental." The master of the "David J. Adams" showed by his language and conduct that what he did he did with design, and with the knowledge that he was violating the laws of the country. He could not have complied with the Customs Law without frustrating the purposes for which he had gone into port.

As to the breach being a "technical" one, it must be remembered that with thousands of miles of coast indented, as the coasts of Canada are, by hundreds of harbours and inlets, it is impossible to enforce the Fishery Law without a strict enforcement of the Customs Laws. This difficulty was not unforeseen by the framers of the Treaty of 1818, who provided that the fishermen should be "under such restrictions as might be necessary to prevent their taking, drying, or curing fish . . . or in any other manner whatever abusing the privileges reserved to them." No naval force which could be equipped by the Dominion would of itself be sufficient for the enforcement of the Fishery Laws.

Foreign fishing-vessels are allowed by the Treaty to enter the harbours and inlets of Canada, but they are allowed to do so only for specified purposes. In order to confine them to those purposes it is necessary to insist on the observance of the Customs Laws, which are enforced by officers all along the coast. A strict enforcement of the Customs Laws, and one consistent with the Treaty, would require that, even when coming into port for the purposes for which such vessels are allowed to enter our waters, a Report should be made at the custom-house, but this has not been insisted on in all cases, when the Customs Laws are enforced against those who enter for other than legitimate purposes, and who choose to violate both the Fishery Laws and Customs Laws, the Government is far within its right, and should not be asked to accept an apology and payment of costs. It may be observed here as affecting Mr. Phelps' demands for restoration and damages that the apology and costs have never been tendered, and that Mr. Phelps seems to be of opinion that they are not called for.

5. Mr. Phelps is informed by the Consul-General at Halifax that it is "conceded by the Customs authorities there that foreign fishing-vessels have for forty years been accustomed to go in and out of the bay at pleasure, and have never been required to send ashore and report when they had no business with the port and made no landing, and that no seizure had ever before been made or claim against them for so doing." Nothing of this kind is or could be conceded by the Customs authorities there or elsewhere in Canada.

The bay referred to, the Annapolis Basin, is like all the other harbours of Canada, except that it is unusually well defined, and land-locked and furnished with custom-houses. Neither there, nor anywhere else, have foreign fishing-vessels been accustomed to go in and out at pleasure without reporting. If they had been so permitted the Fishery Laws could not have been enforced, and there would have been no protection against illicit trading. While the Reciprocity Treaty of 1854 and the Fishery Clauses of the Washington Treaty were in force, the Convention of 1818 being, of course, suspended, considerable laxity was allowed to the United States' fishing-vessels, much greater than the terms of those Treaties entitled them to; but the Consul-General is greatly mistaken when he supposes that at other times the Customs Laws were not enforced, and that seizures of foreign fishing-vessels were not made for omitting to report. Abundant evidence on this point can be had.

In 1839 Mr. Vail, the Acting Secretary of State (United States), reported that most of the seizures, which then were considered numerous, were for alleged violation of the Customs Laws (Papers relating to the Treaty of Washington, vol. vi, p. 283, Washington edition). From a letter of the United States' Consul at Charlottetown, dated 19th August, 1870, to the United States' Consul-General at Montreal, it appears that it was the practice of the United States' fishermen at that time to make regular entry at the port to which they resorted. The Consul said, "Here the fishermen enter and clear, and take out permits to land their mackerel from the Collector, and as their mackerel is a free article in this island, there can be no illicit trade."

In the year 1870 two United States' fishing-vessels, the "H. W. Lewis," and the "Granada," were seized on like charges in Canadian waters.

What Mr. Phelps styles "a Custom-house Regulation" is an Act of the Parliament of Canada, and has for many years been in force in all the provinces of the Dominion. It is one which the Government cannot at all alter or repeal, and which its officers are not at liberty to disregard.

6. It is suggested, though not asserted, in the letter of Mr. Phelps, that the penalty cannot reasonably be insisted on, because a new rule has been suddenly adopted, without notice. The rule, as before observed, is not a new one, nor is its

enforcement a novelty. As the Government of the United States chooses to put an end to the arrangement under which the fishermen of that country were accustomed to frequent Canadian waters with so much freedom, the obligation of giving notice to those fishermen that their rights were thereafter, by the action of their own Government, to be greatly restricted, and that they must not infringe the Laws of Canada, was surely a duty incumbent on the Government of the United States rather than on that of Canada. This point cannot be better expressed than in the language reported to have been recently used by Mr. Bayard, the United States' Secretary of State, in his reply to the owners of the "George Cushing," a vessel recently seized on a similar charge: "You are well aware that questions are now pending between this Government and that of Great Britain in relation to the justification of the rights of American fishing-vessels in the territorial waters of British North America, and we shall relax no effort to arrive at a satisfactory solution of the difficulty. In the meantime, it is the duty and manifest interest of all American citizens entering Canadian jurisdiction to ascertain and obey the Laws and Regulations there in force. For all unlawful depredations of property or commercial rights this Government will expect to procure redress and compensation for the innocent sufferers."

Interpretation of the Treaty.

Mr. Phelps, after commenting in the language already quoted from his letter on the claim for the Customs penalty, treats, as the only question, whether the vessel is to be forfeited for purchasing bait to be used in lawful fishing. In following his argument on this point, it should be borne in mind, as already stated, that in so far as the fact of the bait having been intended to be used in lawful fishing is material to the case, that is a fact which is not admitted. It is one in respect of which the burden of proof is on the owners of the vessel, and it is one on which the owners of the vessel have not yet obtained an adjudication by the Tribunal before which the case has gone.

Mr. Phelps admits "that if the language of the Treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would be prohibited from entering a Canadian port for any purpose whatever, except to obtain wood or water, or to repair damages, or to seek shelter."

It is claimed on the part of the Government of Canada that this is not only the language of the Treaty of 1818, but "its spirit and plain intent." To establish this contention, it should be sufficient to point to the clear unambiguous words of the Treaty. To those clear and unambiguous words Mr. Phelps seeks to attach a hidden meaning by suggesting that certain "preposterous consequences" might ensue from giving them their ordinary construction. He says that with such a construction a vessel might be forfeited for entering a port to "post a letter, to send a telegram, to buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants, &c."

There are probably few Treaties or Statutes the literal enforcement of which might not, in certain circumstances, produce consequences worthy of being described as preposterous.

At most, this argument can only suggest that, in regard to this Treaty, as in regard to every enactment, its enforcement should not be insisted on where accidental hardships or "preposterous consequences" are likely to ensue. Equity, and a natural sense of justice, would doubtless lead the Government with which the Treaty was made to abstain from its rigid enforcement for inadvertent offences, although the right so to enforce it might be beyond question. It is for this reason that, inasmuch as the enforcement of this Treaty, to some extent, devolves on the Government of Canada, the Parliament of the Dominion has in one of the sections already quoted of the Statute relating to fishing by foreign vessels (31 Vict., cap. 61, sec. 19) intrusted the Executive with power to mitigate the severity of those provisions when an appeal to executive interference can be justified. In relation to every law of a penal character the same power for the same purpose is vested in the Executive. Mr. Phelps will find it difficult, however, to discover any authority among the jurists of his own country or of Great Britain, or among the writers on international law, for the position that, against the plain words of a Treaty or Statute, an interpretation is to be sought which will obviate all chances of hardship and render unnecessary the exercise of the executive power before mentioned.

It might fairly be urged against his argument that the Convention of 1818 is less open to an attempt to change its plain meaning than even a Statute would be. The latter is a declaration of its will by the supreme authority of the State, the former was

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a compact deliberately and solemnly made by two parties, each of whom expressed what he was willing to concede, and by what terms he was willing to be bound. If the purposes for which the United States desired that their fishing-vessels should have the right to enter British American waters included other than those expressed, their desire cannot avail them now, nor be a pretext for a special interpretation after they assented to the words, "and for no other purpose whatever." If it was "preposterous" that their fishermen should be precluded from entering provincial waters "to post a letter," or for any other of the purposes which Mr. Phelps mentions, they would probably never have assented to a Treaty framed as this was. Having done so, they cannot now urge that their language was "preposterous," and that its effect must be destroyed by resort to "interpretation."

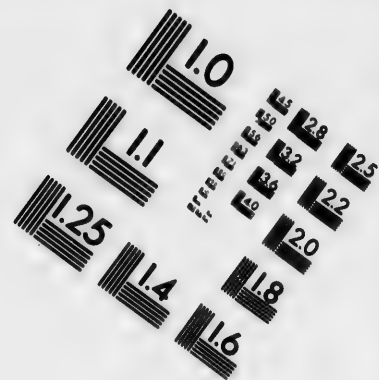
But that which Mr. Phelps calls "literal interpretation" is by no means so preposterous as he suggests, when the purpose and object of the Treaty come to be considered. While it was not desired to interfere with ordinary commercial intercourse between the people of the two countries, the deliberate and declared purpose existed on the part of Great Britain, and the willingness existed on the part of the United States, to secure absolutely, and free from the possibility of encroachment, the fisheries of the British possessions in America to the people of those possessions, excepting as to certain localities, in respect of which special provisions were made. To effect this it was merely necessary that there should be a joint declaration of the right which was to be established, but that means should be taken to preserve that right. For this purpose a distinction was necessarily drawn between the United States' vessels engaged in commerce and those engaged in fishing. While the former had free access to our coasts, the latter were placed under a strict prohibition.

The purpose was to prevent the fisheries from being poached on, and to preserve them to "the subjects of His Britannic Majesty in North America, not only for the pursuit of fishing within the waters adjacent to the coast (which can under the law of nations be done by any country), but as a basis of supplies for the pursuit of fishing in the deep sea. For this purpose it was necessary to keep out foreign fishing-vessels, excepting in cases of dire necessity, no matter under what pretext they might desire to come in. The fisheries could not be preserved to our people if every one of the United States' fishing-vessels that were accustomed to swarm along our coasts could claim the right to enter our harbours "to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence," or to "buy medicine" or to "purchase a new rope." The slightest acquaintance with the negotiations which led to the Treaty of 1818, and with the state of the Fishery question preceding it, induces the belief that if the United States' negotiators had suggested these as purposes for which their vessels should be allowed to enter our waters, the proposal would have been rejected as "preposterous," to quote Mr. Phelps' own words. But Mr. Phelps appears to have overlooked an important part of the case when he suggested that it is a "preposterous" construction of the Treaty, which would lead to the purchase of bait being prohibited. So far from such a construction being against "its spirit and plain intent," no other meaning would accord with that spirit and intent. If we adopt one of the methods contended for by Mr. Phelps of arriving at the true meaning of the Treaty, namely, having reference to the "attending circumstances," &c., we find that so far from its being considered by the framers of the Treaty that a prohibition of the right to obtain bait would be a "preposterous" and an extreme instance, a proposition was made by the United States' negotiators that the proviso should read thus: "Provided, however, that American fishermen shall be permitted to enter such bays and harbours for the purposes only of obtaining shelter, wood, water, and bait," and the insertion of the word "bait" was resisted by the British negotiators and struck out. After this, how can it be contended that any rule of interpretation would be sound which would give to United States' fishermen the very permission which was sought for on their behalf during the negotiations, successfully resisted by the British Representatives, and deliberately rejected by the framers of the Convention?

It is a well-known fact that the negotiations preceding the Treaty had reference very largely to the deep-sea fisheries, and that the right to purchase bait in the harbours of the British possessions for the deep-sea fishing was one which the United States' fishermen were intentionally excluded from. Referring to the difficulties which subsequently arose from an enforcement of the Treaty, an American author says:—

"It will be seen that most of those difficulties arose from a change in the character of the fisheries, cod being caught on the banks, were seldom pursued within the 3-mile





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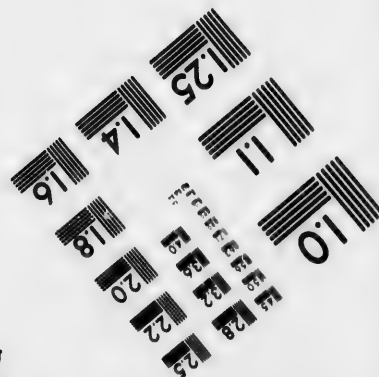
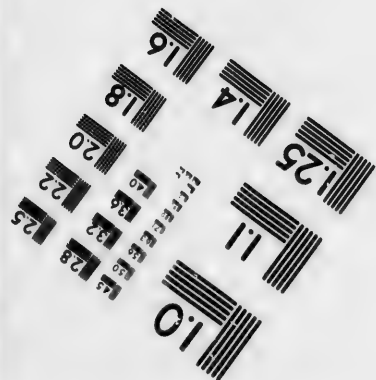
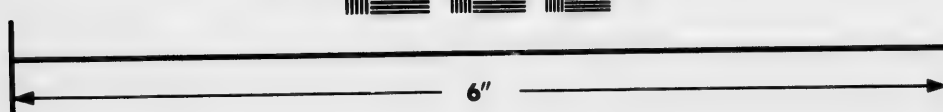
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limit, and yet it was to cod, and perhaps halibut, that all the early negotiations had referred.

"The mackerel fishing had now sprung up in the Gulf of St. Lawrence, and had proved extremely profitable. This was at that time an inshore fishery." ("Schuyler's American Diplomacy," p. 411.)

In further amplification of this argument, the Undersigned would refer to the views set forth in the Memorandum before mentioned in the letters of Mr. Bayard in May last, and to those presented in the Report of the Minister of Marine and Fisheries, approved on the 14th June ultimo.

While believing, however, that Mr. Phelps cannot, by resort to any such matters, successfully establish a different construction for the Treaty from that which its words present, the Undersigned submits that Mr. Phelps is mistaken as to the right to resort to any matters outside the Treaty itself to modify its plain words. Mr. Phelps expresses his contention thus:—

"It seems to me clear that the Treaty may be considered in accordance with those ordinary and well-settled rules applicable to all written instruments, which without such salutary assistance must constantly fail of their purpose. By these rules the letter often gives way to the intent, or rather is only used to ascertain the intent, and the whole document will be taken together, and will be considered in connection with the attending circumstances, the situation of the parties, and the object in view, and thus the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended."

It may be readily admitted that such rules of interpretation exist, but when are they to be applied? Only when interpretation is necessary—when the words are plain in their ordinary meaning the task of interpretation does not begin. Vattel says in reference to the "Interpretation of Treaties":—

"The first general maxim of interpretation is, that it is not allowable to interpret what has no need of interpretation. When the deed is worded in clear and precise terms, when its meaning is evident and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it, is but an attempt to elude it.

"Those cavillers who dispute the sense of a clear and determined article are accustomed to seek their frivolous subterfuges in the pretended intentions and views which they attribute to its author. It would be very often dangerous to enter with them into the discussion of these supposed views that are pointed out in the piece itself. The following rule is better calculated to foil such cavillers, and will at once cut short all chicanery: *If he who could and ought to have explained himself clearly and fully has not done it, it is the worse for him*; he cannot be allowed to introduce subsequent restrictions which he has not expressed. This is a maxim of the Roman law: '*Pactionem obscuram us nocere in quorum fuit potestate legem apertius conscribere.*' The equity of this rule is glaringly obvious, and its necessity is not less evident." (Vattel's "Interpretation of Treaties," Lib. II, chap. 17).

Sedgewick, the American writer on the "Construction of Statutes" (and Treaties are constructed by much the same rules as Statutes), says, at p. 194: "The rule is, as we shall constantly see, cardinal and universal, but if the Statute is plain and unambiguous, there is no room for construction or interpretation. The Legislature has spoken; their interpretation is free from doubt, and their will must be obeyed." "It may be proper," it has been said in Kentucky, "in giving a construction to a Statute, to look to the effects and consequences when its provisions are ambiguous or the legislative intention is doubtful. But when the law is clear and explicit, and its provisions are susceptible of but one interpretation, evil can only be avoided by a change of the law itself, to be effected by legislative and not judicial action." "So too," it is said by the Supreme Court of the United States, "where a Law is plain and unambiguous, whether it be expressed in general or limited terms, the Legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

At the Tribunal of Arbitration at Geneva, held under the Washington Treaty in 1872, a similar question arose. Counsel for Her Majesty's Government presented a supplemental argument, in which the ordinary rules for the interpretation of Treaties were invoked. Mr. Evarts, one of the counsel for the United States, and afterwards Secretary of State, made a supplemental reply in which the following passage occurs: "At the close of the special argument we find a general presentation of canons for the construction of Treaties, and some general observations as to the light or the controlling reason under which these rules of the Treaty should be construed. These suggestions may be briefly dismissed. It certainly would be a very great reproach to

these nations, which had deliberately fixed upon three propositions as expressive of the law of nations, in their judgment, for the purposes of this trial, that a resort to general instructions for the purpose of interpretation was necessary. Eleven canons of interpretation drawn from Vattel are presented in order, and then several of them, as the case suits, are applied as valuable in elucidating this or that point of the rules. But the learned counsel has omitted to bring to your notice the first and most general rule of Vattel, which, being once understood, would, as we think, dispense with any consideration of these subordinate canons which Vattel has introduced to be used only in case his first general rule does not apply. This first proposition is that *'it is not allowable to interpret what has no need of interpretation.'*" (Washington Treaty Papers, vol. iii, pp. 446, 447.)

In a letter of Mr. Hamilton Fish to the United States' Minister in England on the same subject, dated the 16th April, 1872, the following view was set forth:—

"Further than this, it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of Statutes and Treaties, and of written instruments generally, would preclude the seeking of evidence of intent outside the instrument itself. It might be a painful trial on which to enter in seeking the opinions and recollections of parties, to bring into conflict the differing expectations of those who were engaged in the negotiation of an instrument." (Washington Treaty Papers, vol. ii, p. 473.)

But even at this barrier the difficulty in following Mr. Phelps' argument, by which he seeks to reach the interpretation he desires, does not end. After taking a view of the Treaty which all authorities thus forbid, he says, "Thus regarded, it appears to me clear that the words, 'for no other purpose whatever,' as employed in the Treaty, mean for no other purpose inconsistent with the provisions of the Treaty."

Taken in that sense, the words would have no meaning, for no other purpose would be consistent with the Treaty excepting those mentioned. He proceeds, "or prejudicial to the interests of the provinces or their inhabitants." If the United States' authorities are the judges as to what is prejudicial to those interests, the Treaty will have very little value; if the provinces are to be the judges, it is most prejudicial to their interests that United States' fishermen should be permitted to come into their harbours on any pretext, and it is fatal to their fishery interests that these fishermen, with whom they have to compete at such a disadvantage in the markets of the United States, should be allowed to enter for supplies and bait, even for the pursuit of the deep-sea fisheries. Before concluding his remarks on this subject, the Undersigned would refer to a passage in the answer on behalf of the United States to the Case of Her Majesty's Government as presented to the Halifax Fisheries Commission in 1877: "The various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing Laws or the re-enactment of former oppressive Statutes."

Mr. Phelps has made a lengthy citation from the Imperial Act 50 Geo. III, cap. 38, for the purpose of establishing—

1. That the penalty of forfeiture was not incurred by any entry into British ports; unless accompanied by fishing, or preparing to fish, within the prohibited limits.

2. That it was not the intention of Parliament, or its understanding of the Treaty, that any other entry should be regarded as an infraction of the provisions of that Act.

As regards the latter point, it seems to be effectually disposed of by the quotation which Mr. Phelps has made. The Act permits fishermen of the United States to enter into the bays or harbours of His Britannic Majesty's dominions in America for the purposes named in the Treaty, "and for no other purpose whatever;" and, after enacting the penalty of forfeiture in regard to certain offences, provides a penalty of 200*l.* against any persons otherwise offending against the Act. It cannot, therefore, be successfully contended that Parliament intended to permit entry into the British American waters for the purchase of bait, or for any other than the purposes specified in the Treaty.

As to the first point, it is to be observed that the penalty of forfeiture was expressly pronounced as applicable to the offence of fishing or preparing fish. It may be that forfeiture is incurred by other illegal entry, contrary to the Treaty, and contrary to the Statute. It may also be contended that preparing, within the prohibited limits, to fish in any place is the offence at which the penalty is aimed, or it may be that the preparing within these waters to fish is evidence of preparing to fish within the prohibited waters,

under the Imperial Statute, and especially under the Canadian Statute, which places the burden of proof on the defendant.

The Undersigned does not propose at this time to enter into any elaborate argument to show the grounds on which the penalty of forfeiture is available, because that question is one which is more suitable for determination by the Courts to whose decision it has been referred in the very case under consideration.

The decision in the case of the "David J. Adams" will be soon pronounced, and as the Government of Canada will be bound by the ultimate judgment of competent authority on this question, and cannot be expected to acquiesce in the view of the United States' Government without such a judgment, any argument of the case in diplomatic form would be premature and futile.

In order, however, to show that Mr. Phelps is in error when he assumes that the practical construction hitherto given to the Treaty is in accordance with his views, it is as well to state that in the year 1815 the Commander of one of His Majesty's ships of war seized four United States' fishing-vessels (see Sabine on Fisheries); and again, in 1817, the Imperial Government acted on the view that they had the right to seize foreign vessels encroaching on the fishing-grounds. Instructions were issued by Great Britain to seize foreign vessels fishing or at anchor in any of the harbours or creeks in the British North American possessions, or within their maritime jurisdiction, and send them to Halifax for adjudication. Several vessels were seized, and information was fully communicated to the Government of the United States. This, it will be remembered, was not only before the Treaty, but before the Imperial Act above referred to.

The following were the words of the Admiralty Instructions then issued: "On your meeting with any foreign vessels fishing or at anchor in any of the harbours or creeks in His Majesty's North American Provinces, or within our maritime jurisdiction, you will seize and send such vessel so trespassing to Halifax for adjudication, unless it should clearly appear that they have been obliged to put in there in consequence of distress, acquainting me with the cause of such seizure, and every other particular, to enable me to give all information to the Lords Commissioners of the Admiralty."

Under these instructions eleven or twelve American fishing-vessels were seized in Nova Scotia on the 8th June, 1817, in consequence of their frequenting some of the harbours of that province.

In 1818 the fishing-vessels "Mabby" and "Washington" were seized and condemned for entering and harbouring in British American waters.

In 1839 the "Java," "Independence," "Magnolia," and "Hart" were seized and confiscated, the principal charge being that they were within British American waters without legal cause.

In 1840 the "Papineau" and "Mary" were seized and sold for purchasing bait.

In the spring of 1819 a United States' fishing-vessel named the "Charles" was seized and condemned in the Vice-Admiralty Court in New Brunswick for having resorted to a harbour of that province, after warning, and without necessity.

In the year 1871 the United States' fishing-vessel "J. H. Nickerson" was seized for having purchased bait within 3 marine miles of the Nova Scotian shore, and condemned by the Judgment of Sir William Young, Chief Justice of Nova Scotia, and Judge of the Court of Vice-Admiralty. The following is a passage from his Judgment:—

"The vessel went in, not to obtain water or men, as the allegation says, but to purchase or procure bait (which, as I take it, is a preparing to fish), and it was contended that they had a right to do so, and that no forfeiture accrued on such entering. The answer is, that if a privilege to enter our harbours for bait was to be conceded to American fishermen it ought to have been in the Treaty, and it is too important a matter to have been accidentally overlooked. We knew indeed from the State Papers that it was not overlooked, that it was suggested, and declined. But the Court, as I have already intimated, does not insist upon that as a reason for its Judgment. What may be fairly and justly insisted on is, that beyond the four purposes specified in the Treaty—shelter, repairs, water, and wood—here is another purpose or claim not specified, while the Treaty itself declares that no such other purpose shall be received to justify an entry. It appears to me an inevitable conclusion that the 'J. H. Nickerson,' in entering the Bay of Ingonish for the purpose of procuring bait while there, became liable to forfeiture, and upon the true construction of the Treaty and Acts of Parliament was legally seized." (*Vide* Halifax Commission, vol. iii, pp. 3398, Washington edition.)

In view of these seizures and of this decision it is difficult to understand the following passages in the letter of Mr. Phelps:—

"The practical construction given to the Treaty down to the present time has been in entire accord with the conclusions thus deduced from the Act of Parliament. The

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British Government has repeatedly refused to allow interference with American fishing-vessels, unless for illegal fishing, and has given explicit orders to the contrary."

"Judicial authority upon the question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known, but in no case, so far as I can ascertain, has the seizure of an American vessel ever been enforced on the ground of the purchase of bait or of any other supplies. On the hearing before the Halifax Fishery Commission in 1877-78, this question was discussed, and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty either of fishing or preparing to fish within the prohibited limits."

Although Mr. Phelps is under the impression that "in the hearing before the Halifax Fishery Commission in 1877 this question was discussed, and no case could be produced of any such condemnation," the fact appears in the records of that Commission, as published by the Government of the United States, that on a discussion which there arose, the instances above mentioned were nearly all cited, and the Judgment of Sir William Young in the case of the "J. H. Nickerson" was presented in full, and it now appears among the papers of that Commission (see vol. iii, Documents and Proceedings of Halifax Commission, p. 3398, Washington edition). The decision in the case of the "J. H. Nickerson" was subsequent to that in the case of the "White Fawn" mentioned, to the exclusion of all the other cases referred to by Mr. Phelps. Whether that decision should be reaffirmed or not is a question more suitable for judicial determination than for discussion here.

Right of the Dominion Parliament to make Fishery Enactments.

Mr. Phelps deems it unnecessary to point out that it is not in the power of the Canadian Parliament to alter or enlarge the provisions of the Act of the Imperial Parliament, or to give to the Treaty either a construction or a legal effect not warranted by that Act.

No attempt has ever been made by the Parliament of Canada, or by that of any of the Provinces, to give a "construction" to the Treaty, but the Undersigned submits that the right of the Parliament of Canada, with the Royal Assent given in the manner provided in the Constitution, to pass an Act on this subject to give that Treaty effect, or to protect the people of Canada from the infringement of the Treaty provisions, is clear beyond question. An Act of that Parliament duly passed, according to constitutional forms, has as much the force of law in Canada, and binds as fully offenders who may come within its jurisdiction, as any Act of the Imperial Parliament.

The efforts made on the part of the Government of the United States to deny and refute the validity of Colonial Statutes on this subject have been continued for many years, and in every instance have been set at naught by the Imperial authorities and by the Judicial Tribunals.

In May 1870 this vain contention was completely abandoned; a Circular was issued by the Treasury Department at Washington, in which Circular the persons to whom it was sent were authorized and directed to inform all masters of fishing-vessels that the authorities of the Dominion of Canada had resolved to terminate the system of granting fishing licences to foreign vessels.

The Circular proceeds to state the terms of the Treaty of 1818, in order that United States' fishermen might be informed of the limitation thereby placed on their privileges. It proceeds further to set out at large the Canadian Act of 1868, relating to fishing by foreign vessels, which has been hereinbefore referred to.

The fishermen of the United States were by that Circular expressly warned of the nature of the Canadian Statute, which it is now once more pretended is without force, but no intimation was given to those fishermen that these provisions were nugatory and would be resisted by the United States' Government. Lest there should be any misapprehension on that subject, however, on the 9th June of the same year, less than a month after that Circular, another Circular was issued from the same Department, stating again the terms of the Treaty of 1818, and then containing the following paragraph: "Fishermen of the United States are bound to respect the British Laws for the regulation and preservation of the fisheries to the same extent to which they are applicable to British and Canadian fishermen." The same Circular, noticing the change made in the Canadian Fishery Act of 1868 by the amendment of 1870, makes this observation: "It will be observed that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning."

The Canadian Statute of 1886.

Mr. Phelps is again under an erroneous impression with regard to the Statute introduced at the last Session of the Dominion Parliament.

He is informed that "since the seizure" the Canadian authorities have pressed, or are pressing, through the Canadian Parliament, in much haste, an Act which is designed, for the first time in the history of the Legislature, under this Treaty, to make the facts upon which the American vessels have been seized illegal, and to authorize proceedings against them therefor.

The following observations are appropriate in relation to this passage of Mr. Phelps' letter:—

1. The Act which he refers to was not passed with haste. It was passed through the two Houses in the usual manner, and with the observance of all the usual forms. Its passage occupied probably more time than was occupied in the passage through the Congress of the United States of a measure which possesses much the same character, and which will be referred to hereafter.

2. The Act has no bearing on the seizures referred to.

3. It does not make any act illegal which was legal before, but declares what penalty attaches to the offences which were already prohibited. It may be observed in reference to the charges of "undue haste," and of "legislating for the first time in the history of the legislation under the Treaty," that before the Statute referred to had become law the United States' Congress passed a Statute containing the following section:—

"That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is hereby authorized to issue his Proclamation, excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of each foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such Proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said Proclamation from the exercise of any commercial privileges shall do any act prohibited by said Proclamation in the ports, harbours, or waters of the United States for or on account of such vessel, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this Act, or aiding and abetting any other person in such opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years."—Sec. 17 of Act No. 85 of Congress, 1886.

This enactment has all the features of hostility, which Mr. Phelps has stigmatized as "unprecedented in the history of legislation under the Treaty."

Enforcement of the Acts without Notice.

Mr. Phelps insists upon what he regards as "obvious grounds of reason and justice" and "upon common principles of comity, that previous notice should have been given of the new stringent restrictions" it was intended to enforce.

It has been already shown that no new restrictions have been attempted. The case of the "David J. Adams" is proceeding under the Statutes which have been enforced during the whole time when the Treaty had operation.

It is true that for a short time prior to the Treaty of Washington, and when expectations existed of such a Treaty being arrived at, the instructions of 1870, which are cited by Mr. Phelps, were issued by the Imperial authorities. It is likewise true that under these instructions the rights of Her Majesty's subjects in Canada were not insisted on in their entirety. These instructions were obviously applicable to the particular time at which and the particular circumstances under which they were issued by Her Majesty's Government.

But it is obviously unfair to invoke them now under wholly different circumstances as establishing a "practical construction" of the Treaty, or as affording any ground for claiming that the indulgence which they extended should be perpetual.

The Fishery Clauses of the Treaty of Washington were annulled by a notice from the

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Government of the United States, and, as has already been urged, it would seem to have been the duty of that Government, rather than of the Government of Canada, to have warned its own people of the consequences which must ensue. This was done in 1870, by the Circulars from the Treasury Department at Washington, and might well have been done at this time.

Mr. Phelps has been pleased to stigmatize "the action of the Canadian authority in seizing and still detaining the 'David J. Adams' as not only unfriendly and discourteous but altogether unwarrantable."

He proceeds to state that that vessel "had violated no existing law," although his letter cites the Statute which she had directly and plainly violated; and he states that she "had incurred no penalty that any known Statute imposed;" while he has directed at large the words which inflict a penalty for the violation of that Statute. He declares it seems impossible for him to escape the conclusion that "this and similar seizures were made by the Canadian authorities for the deliberate purpose of harassing and embarrassing the American fishing-vessels in the pursuit of their lawful employment," and that "the injury is very much aggravated by the motives which appear to have prompted it."

He professes to have found the real source of the difficulty in the "irritation that has taken place among a portion of the Canadian people on account of the termination by the United States' Government of the Washington Treaty," and in a desire to drive the United States, "by harassing and annoying their fishermen, into the adoption of a new Treaty, by which Canadian fish shall be admitted free," and he declares that "this scheme is likely to prove as mistaken in policy as it is unjustifiable in principle."

He might, perhaps, have more accurately stated the real source of the difficulty had he suggested that the United States' authorities have long endeavoured, and are still endeavouring, to obtain that which by their solemn Treaty they deliberately renounced, and to deprive the Canadian people of that which by Treaty the Canadian people lawfully acquired.

The people of the British North American Provinces, ever since the year 1818 (with the exception of those periods in which the Reciprocity Treaty and the Fishery Clauses of the Washington Treaty prevailed), have, at enormous expense, and with great difficulty, been protecting their fisheries against encroachments by fishermen of the United States, carried on under every form and pretext, and aided by such denunciations as Mr. Phelps has thought proper to reproduce on this occasion. They value no less now than they formerly did the rights which were secured to them by the Treaty, and they are still indisposed to yield those rights, either to individual aggression or official demands.

The course of the Canadian Government since the rescission of the Fishery Clauses of the Washington Treaty has been such as hardly to merit the aspersions which Mr. Phelps has used. In order to avoid irritation and to meet a desire which the Government represented by Mr. Phelps professed to entertain for the settlement of all questions which could reawaken controversy, they renewed for six months after the expiration of those clauses all the benefits which the United States' fishermen had enjoyed under them, although, during that interval, the Government of the United States enforced against Canadian fishermen the Laws which those Fishery Clauses had suspended.

Mr. Bayard, the United States' Secretary of State, has made some recognition of these facts in a letter which he is reported to have written recently to the owners of the "David J. Adams." He says:—

"More than one year ago I sought to protect our citizens engaged in fishing from results which might attend any possible misunderstanding between the Governments of Great Britain and the United States as to the measure of their mutual rights and privileges in the territorial waters of British North America. After the termination of the Fishery Articles of the Treaty of Washington, in June last, it seemed to me then, and it seems to me now, very hard that differences of opinion between the two Governments should cause loss to honest citizens, whose line of obedience might be thus rendered vague and uncertain, and their property be brought into jeopardy. Influenced by this feeling, I procured a temporary arrangement which secured our fishermen full enjoyment of all Canadian fisheries, free from molestation, during a period which would permit discussion of a just international settlement of the whole Fishery question, but other counsels prevailed, and my efforts further to protect fishermen from such trouble as you now suffer were unavailing."

At the end of the interval of six months the United States' authorities concluded to refrain from any attempt to negotiate for larger fishery rights for their people, and they have continued to enforce their Customs Laws against the fishermen and people of Canada.

The least they could have been expected to do under these circumstances was to leave

to the people of Canada the full and unquestioned enjoyment of the rights secured to them by Treaty. The Government of Canada has simply insisted upon those rights and has presented to the legal Tribunals its claim to have them enforced.

The insinuations of ulterior motives, the imputations of unfriendly dispositions, and the singularly inaccurate representation of all the leading features of the questions under discussion, may, it has been assumed, be passed by with little more comment. They are hardly likely to induce Her Majesty's Government to sacrifice the rights which they have heretofore helped our people to protect, and they are too familiar to awaken indignation or surprise.

The Undersigned respectfully recommends that the substance of this Memorandum, if approved, be forwarded to the Secretary of State for the Colonies, for the information of Her Majesty's Government.

(Signed)

JNO. S. D. THOMPSON,

Minister of Justice.

Ottawa, July 22, 1886.

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